TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 25

SUTPHEN ESTATES, INC., APPELLANT,

vs.

THE UNITED STATES OF AMERICA, LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED APRIL 9, 1951.

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UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, PLAINTIFF,

against

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., WARNER BROS. PICTURES DISTRIBUTING CORPORATION (formerly known as VITAGRAPH, INC.), WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, NATIONAL THEATRES CORPORATION, COLUMBIA PICTURES CORPORATION, SCREEN GEMS, INC., COLUMBIA PICTURES OF LOUISIANA, INC., UNIVERSAL CORPORATION, UNIVERSAL PICTURES COMPANY, INC., UNIVERSAL FILM EXCHANGES, INC., BIG U FILM EXCHANGE, INC., and UNITED ARTISTS CORPORATION, DEFENDANTS.

FINAL DECREE

The plaintiff, having filed its petition herein on July 29, 1938, and its amended and supplemental complaint on November 14, 1940; the defendants having filed their answers to such complaint, denying the substantive allegations thereof; the court after trial having entered a decree herein dated December 31, 1946, as modified by order entered February 11, 1947; the plaintiff and the defendants having appealed from such decree; the Supreme Court of the United States having in part affirmed and in part reversed such decree, and having remanded this case to this court for further proceedings in conformity with its opinion dated May 3, 1948; this court having, on June 25, 1948, by order made the mandate and decree of the Supreme Court the order and judgment of this court; a consent decree having been entered on November 8, 1948, against the defendants [fol. 15] Radio-Keith Orpheum Corporation, RKO Radio Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation, and Keith-Albee-Orpheum Corporation; orders having been entered on stipulation against the Fox, Loew, and Warner defendants respectively, and Loew having further stipulated in the record, with respect to certain theatre interests held jointly with others; and a consent judgment having been entered on March 3, 1949 against

defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation; and an order having been entered on April 21, 1949, severing and terminating, as of March 3, 1949, this action as against defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation; and an order having been entered on January 18, 1950 severing and terminating as of November 8, 1948 the action as against defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation and Keith-Albee-Orpheum Corporation;

Now, having considered the proposals of the parties, having duly received additional evidence and heard further arguments after entry of the consent decree against the RKO defendants, and having rendered its opinion on July 25, 1949, and having filed its findings of fact and conclusions of law in accordance with said opinion:

It is hereby ordered, adjudged, and decreed that the decree heretofore entered by this court on December 31, 1946 is hereby amended to read as follows:

I

1. The findings of fact and conclusions of law heretofore made are superseded by the findings and conclusions now entered in support of this decree.

2. The complaint is dismissed as to all claims made against the defendants herein based upon their acts as pro- [fol. 16] ducers, whether as individuals or in conjunction with others.

II

Each of the defendant distributors, Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.); Twentieth Century-Fox Film Corporation, and the successors of each of them (including but not limited to companies resulting from divorcement), and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty per cent, is hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in

writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.

3. From granting any clearance between theatres not in substantial competition.

4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under [fol. 17] the provisions of this decree, the burden shall be upon the distributor to sustain the legality thereof.

5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant or with theatres in new circuits which may be formed as a result of divorcement. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal," covering the exhibition of features in a number of theatres usually comprising a circuit.

7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the ex-

tent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty per cent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

[fol. 18] 8. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others.

III

Each of the defendant exhibitors, Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation; and the successors of each of them (including but not limited to companies resulting from divorcement), and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty per cent, is hereby enjoined and restrained:

1. From performing or enforcing agreements, if any, referred to in Paragraphs 5 and 6 of the foregoing Section II hereof to which it may be a party.

2. From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

3. From making or continuing to perform agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

[fol. 19] 4. From making or continuing leases of theatres under which it leases any of its theatres to another de-

fendant or to an independent operating a theatre in the same competitive area in return for a share in the profits.

5. From continuing to own or acquiring any beneficial interests in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant, or with any company resulting from divorcements provided for in decrees entered in this cause.

6. From acquiring a beneficial interest in any additional theatre unless the acquiring company shall show to the satisfaction of the court, and the court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures, provided, however, that the acquisition of a theatre as a replacement for a theatre, held or acquired in conformity with this decree, which may be lost through physical destruction, conversion to non-theatrical purposes, disposition (other than the disposition of a theatre in compliance with this decree) or expiration or cancellation of the lease under which such theatre is held, shall not be deemed to be the acquisition of an additional theatre.

7. From operating, booking, or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

IV

1. Within six months from the entry of this decree each of the major defendants named in Sections II and III of this decree shall submit a plan for the ultimate separation of its distribution and production business from its exhibi- [fol. 20] tion business. Upon the filing of such a plan, the Government shall have three months within which to file objections thereto and propose amended or alternative plans for accomplishing the same result. Such further proceedings with respect to such plans as the court may then order shall then be had. Such plans shall, in any event, provide for the completion of such separation within three years from the date of the entry of this decree.

2. Within one year from the entry of this decree the Government and each of the defendant exhibitors named in Section III of this decree shall submit respectively such plans for divestiture of theatre interests, other than those heretofore ordered to be divested, which they believe to be

adequate to satisfy the requirements of the Supreme Court decision herein with respect to such divestiture. Upon the filing of such a plan the Government and the affected defendant shall have six months within which to file objections thereto and propose amended or alternative plans f accomplishing the same result. Such further proceedings with respect to such plans may then be had as the court may then order.

3. No defendant distributor named in Section II of this decree, and no distributor company resulting from the divorcement ordered herein, shall engage in the exhibition business; and no defendant exhibitor named in Section III of this decree, and no exhibitor company resulting from the divorcement ordered herein, shall engage in the distribution business, except that permission to a distributor company resulting from divorcement to engage in the exhibition business or to an exhibitor company resulting from divorcement to engage in the distribution business may be granted by the court upon notice to the United States and upon a showing that any such engagement shall not unreasonably [fol. 21] restrain competition in the distribution or exhibition of motion pictures.

4. No exhibitor company resulting from the divorcement ordered herein shall acquire directly or indirectly any interest in any theatre divested by any other defendant pursuant to any plan ordered under Paragraph 2 of Section IV hereof or pursuant to Paragraph C 1 of Section III of the Consent Judgment as to the Paramount defendants entered March 3, 1949.

V

Nothing contained in this decree shall be construed to limit, in any way whatsoever, the right of each major defendant bound by this decree, during the three years allowed for the completion of the plan of reorganization provided for in Section IV, to license or in any way to provide for, the exhibition of any or all the motion pictures which it may at any time distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which such defendant has a proprietary interest, either directly or through subsidiaries.

VI

The defendant distributors named in Section II of this decree and any others who are willing to file with the American Arbitration Association their consent to abide by the rules of arbitration and to perform the awards of arbitrators, are hereby authorized to set up an arbitration system with an accompanying Appeal Board which will become effective as soon as it may be organized, upon terms to be settled by the court upon notice to the parties to this action.

VII

The provisions of the existing consent decree are hereby [fol. 22] declared to be of no further force or effect, except in so far as may be necessary to conclude arbitration proceedings now pending and to liquidate in an orderly manner the financial obligations of the defendants and the American Arbitration Association, incurred in the establishment of the consent decree arbitration systems. Existing awards and those made pursuant to pending proceedings shall continue to be enforceable.

VIII

1. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on notice to any defendant bound by this decree, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege (a) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present. For the purpose of securing compliance with this decree any defendant upon the written

request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of [fol. 23] the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree.

2. Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

IX

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree, and no others, to apply to the court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Dated: February 8, 1950.

Augustus N. Hand,
United States Circuit Judge.
Henry W. Goddard,
United States District Judge.
Alfred C. Coxe.
United States District Judge.

[fol. 24] United States District Court

Equity No. 87-273

(Title omitted)

Consent Judgment as to the Warner Defendants

The Warner defendants having consented to the entry of this judgment without admission by them in respect to any issues or matters in this cause open on remand, and the Court having considered the matter,

NOW, THEREFORE, UPON CONSENT OF THE PARTIES HERETO WITH RESPECT TO THE IS-

SUES AS TO WHICH ACTION WAS SUSPENDED OR RESERVED BY THE COURT, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

I

This judgment is rendered and entered in lieu of and in substitution for the decrees of this Court dated December 31, 1946, as amended, and February 8, 1950. This judgment shall be of no further force and effect and this cause shall be restored to the docket without prejudice to [fol. 25] either party if the proposed reorganization of the Warner defendants shall not have been approved by the stockholders of Warner Bros. Pictures, Inc. within ninety (90) days from the entry of this judgment. Upon such approval by the stockholders this cause shall be severed and terminated against the Warner defendants as of the date of this judgment.

II

The Complaint is dismissed as to all claims made against the Warner defendants based upon their acts as producers of motion pictures, whether as individuals or in conjunction with others.

III

The defendant Warner Bros. Pictures Distributing Corporation, its subsidiaries in which it has more than a fifty per cent interest, its successors, its officers, agents, servants and employees are each hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.

3. From granting any clearance between theatres not in substantial competition.

[fol. 26] 4. From granting or enforcing any clearance against theatres in substantial competition with the theatre

receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this judgment, the burden shall be upon the distributor to sustain the legality thereof.

5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant* or with theatres in new circuits which may be formed as a result of divorcement, provided for in judgments entered in this cause. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres usually comprising a circuit.

[fol. 27] 7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty percent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

* As used in this judgment, the term "defendant" or "defendants" means the defendants, or any of them, in Eq. Cause No. 87-273.

8. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others.

IV

The defendants Warner Bros. Pictures Inc. and Warner Bros. Circuit Management Corporation, their theatre subsidiaries in which they have more than a fifty per cent interest, their successors, their officers, agents, servants and employees are each hereby enjoined:

1. From performing or enforcing agreements referred to in paragraphs 5 and 6 of the foregoing Section III hereof to which it may be a party:

2. From making pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

[fol. 28] 3. From making agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

4. From making leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share of the profits.

5. From acquiring any beneficial interest in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant, or with any company which may be formed as a result of divorcement provided for in judgments entered in this cause.

6. From acquiring a beneficial interest in any theatre provided that:

(a) Until the divorcement and divestiture* provisions

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* Divestiture under the terms of this paragraph 6 shall be deemed to mean the disposition of Warner's interest in the theatres referred to in paragraph 1 of Section V other than

of this judgment have been carried out, beneficial interests in theatres may be acquired

(i) As a substantially equivalent replacement for and in the immediate neighborhood of wholly owned theatres** held or acquired in conformity with this judgment which may be lost through physical destruction or conversion to non-theatrical purposes;

[fol. 29] (ii) In renewing leases covering any wholly owned theatre held or acquired in conformity with this judgment or in acquiring an additional interest in any such theatre under lease;

(iii) As a substantially equivalent replacement for any wholly owned theatre held or acquired in conformity with this judgment which has been lost through inability to obtain a renewal of the lease thereof upon reasonable terms, if Warner or its exhibitor successor shall show to the satisfaction of the Court, and the Court shall first find, that such acquisition will not unduly restrain competition.

(b) After the divorcement and divestiture provisions of this judgment have been carried out, Warner's exhibitor successor may acquire a beneficial interest in any theatre only in the situations covered by paragraphs (i) and (ii) of the preceding subsection (a) unless Warner's exhibitor successor shall show to the satisfaction of the Court, and the Court shall first find, that the acquisition will not unduly restrain competition.

7. From operating, booking or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

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theatres which Warner or its exhibitor successor may in the future be required to dispose of thereunder (as distinguished from those presently required to be disposed of) and the theatres referred to in paragraph 3 of Section V.

** As used in this judgment the word "theatre" means "motion picture theatre in the United States" and the phrase "wholly owned theatre" means a theatre in which Warner or its exhibitor successor, or Warner or its exhibitor successor together with persons who are solely investors, owns a beneficial interest of 95% or more in the lease or fee thereof.

8. From making any agreement which restricts the right of any other exhibitor to acquire a motion picture theatre.

9. From acquiring in conjunction with any actual or potential independent exhibitor any beneficial interest in motion picture theatres.

[fol. 30] V

1. Warner or its successor shall dispose of all its interest in the following theatres in the following towns:

Ansonia, Conn. One theatre; purchaser to have choice of theatres if Ansonia is designated as herein provided.[1]

Appleton, Wis. One theatre if by the end of one year from the date of this judgment an independent[2] theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run.[3] If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

Bristol, Conn. One theatre.

[fol. 31] Chester, Pa. One theatre.

Clifton Forge, Va. One theatre.

Clinton, Mass. One theatre.

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[1] Within four months after the entry of this judgment, Warner shall designate two cities from among Ansonia, Conn., Gettysburg, Pa., Pleasantville, New Jersey, and Sidney, Ohio, in which the purchaser is to have his choice of theatre. No offer for the smaller theatre in each of such two cities shall be accepted until thirty days have elapsed after the properties have been offered for sale. The larger theatre in each of such two cities shall be sold if a reasonable offer therefor is made either during the thirty days or thereafter before the acceptance of a reasonable offer for the smaller theatre.

[2] As used herein, the term "independent" or "independently" refers to any theatre not affiliated with any of the defendants in Eq. Cause No. 87-273.

[3] As used in this judgment "first run" means first run of the eight distributor defendants in Eq. Cause 87-273.

Coshocton, Ohio. One theatre, if at any time during a period of 3 years from the date of this judgment two Warner theatres play first run at a time when there is not more than one other theatre operating first run in Coshocton, except that there may be shown at the Pastime Theatre pictures for which a competitor who has had an opportunity to request licenses had not made an offer, or had made an insubstantial offer, provided that upon the sole determination by the Attorney General or an Assistant Attorney General that a competing first run theatre will be adversely affected by the first run showing of such pictures at such theatre, Warner shall cease the showing of any pictures first run at such theatre within 30 days after receipt by Warner of the notice by the Attorney General of his determination.

Danbury, Conn. Empress or Palace, or Capitol. If Capitol is sold defendant or its successor must file with the Attorney General and the Court a statement of intention by the purchaser to operate said theatre on a first run basis.

Donora, Pa. Harris or Princess.

Dover, N. J. One theatre.

[fol. 32] Elmira, N. Y. One theatre, if at any time during a period of 3 years from the date of this judgment three Warner theatres play feature films first run at a time when there is not more than one other theatre operating first run in Elmira.

Fairmont, W. Va. One theatre if by the end of one year from the date of this judgment an independent theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

Gettysburg, Pa. One theatre; purchaser to have choice of theatres if Gettysburg is designated as provided in footnote 1.

Greensburg, Pa. One theatre.

Hagerstown, Md. One theatre.

Hoboken, N. J. One theatre.

Irvington, N. J. One theatre.

Lawrence, Mass. One theatre.

Lexington, Va. One theatre.

Manchester, Conn. One theatre.

[fol. 33] Martinsburg, W. Va. Apollo or Central and Strand or State.

Medina, N. Y. One theatre.

Millville, N. J. One theatre.

Milwaukee, Wis. Warner or the Alhambra if by the end of one year from the date of this judgment an independent theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

Montclair, N. J. Claridge or Wellmont or Montclair.

Newark, N. J. Stanley or Mayfair and Central or Tivoli or Savoy; the Ritz shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in the footnote hereto,[4] if during a [fol. 34] period of three years from the date of this judgment an independent operator of a theatre in the Springfield Avenue zone, having a theatre suitable for first neighborhood run operation, is not afforded a reasonable opportu-

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[4] For a period of three years, defendant shall not license:

a. More than 60% of the feature films released by the major distributors for first neighborhood run exhibition in any fiscal year, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer; and

b. More than 48 feature films from among the eighty pictures constituting the aggregate of the ten pictures released by each of the major distributors, respectively, for first neighborhood run exhibition in any fiscal year, which are allocated by the respective distributor to its highest selling bracket or brackets, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer.

nity to procure films for such theatre on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling; [fol. 35] Capitol or Globe if by the end of one year from the date of this judgment an independent theatre is not regularly playing second run downtown Newark, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing second run downtown Newark. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

New Britain, Conn. Strand or Embassy or Capitol, but if Capitol is selected defendant shall divest one other theatre if by the end of a year from the disposition of the Capitol an independent theatre is not regularly playing first run or if thereafter (during a period of five years from the date of the disposition of the Capitol) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

[fol. 36] Passaic, N. J. Montauk or Capitol or Central or Playhouse. If the Playhouse[5] is disposed of in lieu of one of the other three theatres, then one of the other three theatres shall be disposed of if by the end of a year from

[5] Warner or its exhibitor successor shall file with the Court and the Attorney General a statement of intention by the purchaser of the Playhouse to operate the Playhouse on a first run basis.

the date of the disposition of the Playhouse no independent theatre is regularly playing on a first run basis or if thereafter (during five years from the date of the disposition of the Playhouse) for the greater part of any year there is not an independent theatre playing on a first run basis. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

Paterson, N. J. . One theatre.

Philadelphia, Pa. Midway or Allegheny; Colonial or Orpheum or Vernon; Rexy[6] and Alhambra or Plaza or Broadway or Savoia, and one theatre shall be divested in addition to the two hereinabove required to be divested in this zone, which shall be the Broadway or the Savoia or [fol. 37] another theatre operated on a first neighborhood run basis, if by the end of one year from the disposition of the Rexy an independent theatre is not regularly playing on a first neighborhood run, or if thereafter (during a period of five years from the date of disposition of the Rexy) for the greater part of any year an independent theatre is not regularly playing on a first neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant. Colney or Fernrock[7] and Diamond or Keystone;[7] the Oxford or the Liberty shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "second" for "first" neighborhood run), if during a period of three years from the date of this judgment an independent operator or operators of two theatres in the Frankford and Mayfair zones (formerly known as Frankford zone), having theatres suitable for second neighborhood run operation, is or are not afforded a reasonable opportunity to procure films for such

[6] Warner or its exhibitor successor shall file with the Attorney General and the Court a statement of intention by the purchaser of the Rexy to operate the Rexy on a first neighborhood run basis.

[7] At the option of Warner, the Bromley may be chosen as one of the two theatres to be divested.

[fol. 38] theatres on a second neighborhood run basis if he or they so desire. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator or operators of its election, which shall be made within 30 days after the Court's ruling; the Forum shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "Forum availability" for "first neighborhood run exhibition"), if during a period of three years from the date of this judgment an independent operator of a theatre in the Frankford zone, having a theatre suitable for playing on the same availability as the Forum, is not afforded a reasonable opportunity to procure films for such theatre on such availability [fol. 39] if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling; Wishart or Richmond, if an independent theatre in the Kensington zone is not regularly playing third neighborhood run by the end of a year from the date of this judgment or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre in the Kensington zone is not regularly playing third neighborhood run. If the parties dis-

agree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

[fol. 40] The Terminal if at any time for a period of 3 years after Warner begins operating the theatre pursuant to the provisions of paragraph 8 of this section V it is operated on a regular policy of exhibiting feature films earlier than seventeen to twenty-one days after first neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination in which event the burden of proof shall be on the defendant.

The Wynne if at any time for a period of 3 years from the date of this judgment it is operated on a regular policy of exhibiting feature films earlier than third neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination in which event the burden of proof shall be on the defendant.

Pittsburgh, Pa. Strand or Center; Sheridan or Regent or Enright or Cameraphone. If Cameraphone is disposed of in lieu of one of the other three theatres, then one other of these three theatres shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4, if during a period of three years from the date of this judgment an independent [fol. 41] operator of a theatre in the East Liberty zone having a theatre suitable for first neighborhood run operation, is not afforded reasonable opportunity to procure feature films for such theatre on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made with-

in 30 days after the Court's ruling; and one other of these three theatres shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "second" for "first" neighborhood run), if during a period of three years from the date of this judgment an independent operator of a theatre in the East Liberty zone having [fol. 42] a theatre suitable for second neighborhood run operation is not afforded a reasonable opportunity to procure feature films for such theatre on a second neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling.

The Schenley shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4, if during a period of three years from the date of this judgment an independent operator of a theatre in the Oakland zone, having a theatre suitable for first neighborhood run operation, is not afforded a reasonable opportunity to procure films for such theatre [fol. 43] on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator

of its election, which shall be made within 30 days after the Court's ruling.

Pleasantville, N. J. One theatre, purchaser to have choice of theatres if Pleasantville is designated as provided in footnote 1.

Portsmouth, Ohio. Columbia or LaRoy.

Punxsutawney, Pa. One theatre.

Racine, Wis. One theatre.

Salem, Oreg. Elsinore or Capitol if at any time during a period of 3 years from the date of this judgment two Warner theatres play first run at a time when there is not more than one other theatre operating first run in Salem, [fol. 44] except that there may be shown at the Capitol Theatre pictures for which a competitor who has had an opportunity to request licenses had not made an offer or had made an insubstantial offer, provided that upon the sole determination by the Attorney General or an Assistant Attorney General that a competing first run theatre will be adversely affected by the first run showing of such pictures at such theatre, Warner shall cease the showing of any pictures first run at such theatre within 30 days after receipt by Warner of the notice by the Attorney General of his determination.

Sharon, Pa. One theatre.

Sheboygan, Wis. Two theatres.

Sidney, Ohio. One theatre, purchaser to have choice of theatre if Sidney is designated as provided in footnote 1.

Silver Spring, Md. If at any time during a period of three years from the date of this judgment the Flower Theatre in Silver Spring is subordinated in playing position to the Silver Theatre while the latter is operated by Warner the question of divestiture of one theatre shall be reopened.

State College, Pa. Cathaum or State.

Staunton, Va. One theatre, if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date [fol. 45] of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

Tarentum, Pa. One theatre, if by end of a year there

is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

Titusville, Pa. One theatre.

Torrington, Conn. Warner or Palace.

Tyrone, Pa. One theatre.

Warren, Pa. One theatre.

Washington, D. C. Tivoli or Sheridan.

Washington, Pa. One theatre if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year [fol. 46] there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

Waynesboro, Pa. One theatre.

Wellsville, N. Y. One theatre.

West Chester, Pa. One theatre.

Wilkinsburg, Pa. Roland or State.

Willimantic, Conn. One theatre.

Wilmington, Del. Warner or Queen or Arcadia or Grand.

York, Pa. One theatre, if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disgree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

2. Warner or its successor shall within one year dispose of all of the interest of Warner in one half of the theatres presently required to be disposed of and within [fol. 47] two years of all of the theatres presently required to be disposed of, under paragraph 1 of this Section V. All theatres which may in the future be required to be

disposed of under paragraph 1 of this Section V shall be disposed of within six months after the time they are required to be divested. All such dispositions shall be made to parties not defendants in Eq. Cause No. 87-273 or owned or controlled by or affiliated with defendants therein, or their successors.

3. As to not to exceed 12 of the theatres presently required to be disposed under paragraph 1 of this Section V, in the event that Warner or its exhibitor successor is unable to sell on reasonable terms its interest therein, Warner or its exhibitor successor upon application to the Court in any such case, and with the approval of the Court first obtained, may lease or sublease the same to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein; on condition, however, that no such lease or sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the lease or any other theatre; and further on condition that Warner or its exhibitor successor shall thereafter sell its interest in any such theatre so leased or subleased as soon thereafter as it can do so upon reasonable terms, and in any event prior to the expiration of such lease or sublease.

4. The Cadet, Elite and Poplar theatres in Philadelphia, Pa., shall be made available for a period of one year for sale or lease. Preference shall be given reasonable offers for motion picture theatre purposes, and until 30 days after making these properties so available for sale, no offer for non-motion picture purposes shall be accepted. After one year, these properties may be retained, sold or leased for any purpose; provided that if within a period of three years from the expiration of such year Warner desires to operate any of said theatres as [fol. 48] a motion picture theatre, Warner shall notify the Attorney General of its intention so to do, and if within 14 days thereafter the Attorney General notifies Warner that such operation will unduly restrain competition in the exhibition of featured motion pictures in the same competitive area as such theatre, Warner may present the matter to the Court for its determination.

5. If Warner or its exhibitor successor should at any time after the expiration of the present leases or the renewals thereof make the Playhouse premises in Ridge-

wood, N. J., available as a whole for sale or lease, preference shall be given to reasonable offers for motion picture theatre purposes, and until 30 days after making these premises so available, no offer for non-motion picture theatre purposes shall be accepted.

6. If the existing decree entered in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of Florence B. Bigelow, et al., against RKO Radio Pictures Inc., et al., shall be modified or vacated, and if, after such modification or vacating, the competitive situation in outlying Chicago (outlying Chicago for the purposes hereof including the entire city of Chicago except the downtown portion of Chicago and also including Berwyn, Blue Island, Chicago Heights, Evanston, La Grange and Oak Park) shall be less favorable for the independent exhibitors in outlying Chicago (an independent exhibitor for the purposes hereof meaning an exhibitor who is not a defendant herein or owned or controlled by or affiliated with a defendant herein), and if such less favorable competitive situation shall be shown by the Attorney General to the satisfaction of the Court in which this consent judgment is entered, then such Court may order such relief against, or with respect to, the theatres of Warner or its exhibitor successor located in outlying Chicago as it may deem just or proper in order to create proper competitive conditions in outlying Chicago or in any particular section thereof.

[fol. 49] 7. This judgment shall not affect the rights and obligations of the parties under the consent orders entered in Eq. Cause No. 87-273 by stipulation between the plaintiff and the Warner defendants with respect to theatres held in conjunction with non-defendants.

8. Nothing in this judgment shall be construed to prohibit Warner until the divorcement required herein has been effectuated and thereafter its exhibitor successor from owning and operating one theatre in Bridgeport, Conn., and one theatre in Harrison, New Jersey, to be constructed in accordance with existing contractual commitments or amendments thereto, or to prohibit Warner from retaking and operating, in the future, the following theatres of Warner now under lease to others.

Aldine Theatre, Wilmington, Del.

Ritz Theatre,	Reading, Pa.
Terminal Theatre,	Philadelphia, Pa.

VI

A. The defendant, Warner Bros. Pictures, Inc., shall present to its stockholders not later than ninety (90) days after the entry of this judgment, a plan of reorganization to effect the divorcement of its theatre assets located in the United States from its production and distribution assets. Such plan shall provide that all of said theatre assets, together with other assets which are not production or distribution assets located in the United States, shall be transferred and assigned to one of the new companies, viz., the New Theatre Company, which shall succeed to and receive such assets, and all of said production and distribution assets, together with other assets which are not theatre assets located in the United States, shall be transferred and assigned to the other new company, viz., the New Picture Company, which shall succeed to and receive such assets, and the New Theatre Company shall distribute pro rata to the stockholders of Warner Bros. Pic- [fol. 50] tures, Inc., in exchange for the assets so received by it, its common capital stock, and the New Picture Company shall distribute pro rata to the stockholders of Warner Bros. Pictures, Inc., in exchange for the assets so received by it, its common capital stock, and thereupon Warner Bros. Pictures, Inc., shall be dissolved.

B. The New Picture Company shall not engage in the exhibition business, and the New Theatre Company shall not engage in the distribution business, except that permission to the New Picture Company to engage in the exhibition business or to the New Theatre Company to engage in the distribution business may be granted by the Court upon notice to the Attorney General and upon a showing that any such engagement shall not unreasonably restrain competition in the distribution or exhibition of motion pictures.

C. Upon the reorganization provided in this Section VI, Warner Bros. Pictures, Inc., shall cause the New Picture Company to file with the Court its consent to be bound by, and receive the benefits of, the terms of Sections III, VI, VII, VIII, X and XI of this judgment (with respect to Sections VII and VIII in so far as they are applicable to

the New Picture Company), and thereafter the New Picture Company shall be in all respects bound by, and receive the benefits of, the terms of such Sections of this judgment.

D. Upon the reorganization provided in this Section VI, Warner Bros. Pictures, Inc., shall cause the New Theatre Company to file with the Court its consent to be bound by, and receive the benefits of, the terms of Sections IV, V, VI, VII, VIII, X and XI of this judgment (with respect to Sections VII and VIII in so far as they are applicable to the New Theatre Company), and thereafter the New Theatre Company shall be in all respects bound by, and receive the benefits of, the terms of such Sections of this judgment.

[fol. 51] VII

A. Within a period not to exceed twenty-seven months after the entry of this judgment the New Theatre Company and the New Picture Company shall be operated wholly independently of one another and shall have no common directors, officers, agents or employees. Each of them shall thereafter be enjoined from attempting to control or influence the business or operating policies of the other by any means whatsoever. The foregoing provisions shall not be construed to prohibit the directors, officers, agents or employees of the Warner defendants, who become affiliated with either one of said new companies and who receive stock in such companies in exchange for stock presently held by them in Warner Bros. Pictures, Inc., from so acquiring stock in the company with which they do not become affiliated and holding such stock for a sufficient period of time to permit them to sell such stock to persons not affiliated with the seller's company without undue hardship to the seller, provided that in any event such sale shall be made within a period not to exceed one year from the effective date of the reorganization of Warner Bros. Pictures, Inc., and provided further that the provisions of this sentence as to the disposition of stock shall not apply to any agent or employee whose legal or beneficial interest in stock does not exceed one per cent (1%) of the total amount of stock outstanding in the company, and shall not apply to the persons who are subject to the provisions of Section VIII hereunder.

B. The by-laws of the New Theatre Company shall provide that a person affiliated with any other motion picture theatre circuit cannot be elected an officer or a director until he has been approved by the Attorney General and the Court, and that in no event can an officer or a director be affiliated with any motion picture theatre circuit (other than the Warner defendants) which has been [fol. 52] a defendant in an anti-trust suit brought by the Government, relating to the production, distribution or exhibition of motion pictures. The by-laws of the New Picture Company shall provide that a person who is a director, officer, agent, employee or substantial stockholder of another motion picture distribution company cannot be elected an officer or a director.

VIII

Harry M., Albert and Jack L. Warner represent that they now own approximately 18% of the outstanding common stock (excluding treasury stock) of Warner Bros Pictures, Inc. and that certain members of their families, including their wives, now own approximately 6% of such stock. Within twenty-seven months from the date hereof, the said Warners and their families shall either:

A. Dispose of said holdings of the stock of (1) the New Picture Company or (2) the New Theatre Company, as they may elect, to a purchaser who is not a stockholder in the other company, a defendant herein or in an anti-trust suit brought by the Government relating to the production, distribution, or exhibition of motion pictures against whom a judgment has been entered, or owned or controlled by or affiliated with such a defendant or a company resulting from divorcements provided for in judgments entered in Equity Cause No. 87-273, and the said Warners shall use their best efforts so to dispose of said stock; or

B. Deposit with a trustee designated by the Court said holdings of stock of the New Picture Company or the New Theatre Company, as they may elect, under a voting trust agreement whereby the trustee shall possess and be entitled to exercise all the voting rights of such shares, including the right to execute proxies and consents with [fol. 53] respect thereto. Such voting trust agreement shall thereafter remain in force until the said Harry M.

Warner, Albert Warner, Jack L. Warner, and their families shall have sold said holdings of stock of the New Picture Company or the New Theatre Company to a purchaser or purchasers as provided in subdivision A above, and upon such sale and transfer such voting trust agreement shall automatically terminate. Such trust shall be upon such other terms and conditions, including compensation to the trustee, as shall be prescribed by the Court. During the period of such voting trust, Harry M. Warner, Albert Warner, Jack L. Warner, and their families, shall be entitled to receive all dividends and other distributions made on account of the trusteed shares, and proceeds from the sale thereof.

For the purpose of evidencing their consent to be bound by the terms of this Section VIII of this judgment, Harry M. Warner, Albert Warner and Jack L. Warner individually have consented to its entry. The obligations in this Section VIII with respect to the stock in the New Picture Company, or the stock in the New Theatre Company, as the case may be, shall be limited, so far as the families of the said Warners are concerned, to the stock received in exchange for approximately 6% of stock of Warner Bros. Pictures, Inc. mentioned in this Section VIII as owned by certain members of the said families.

The stock disposed of in one company as provided in subdivision A above may not be voted if the holder, otherwise entitled to vote the same, be a person with a legal or beneficial stock interest, or be a corporation with a stock interest directly or through subsidiaries or affiliates, in the other company.

IX

A. Nothing contained in this judgment shall be construed to limit, in any way whatsoever, the right of the Warner defendants, during the period of 12 months from [fol. 54] the date hereof, or until the reorganization provided in Section VI hereof shall have been completed, whichever shall be earlier, to license or in any way to provide for the exhibition of any or all of the motion pictures which it may distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which Warner Bros. Pictures, Inc. has or may acquire a proprietary interest of ninety-five per cent or more either directly or through subsidiaries.

B. After 12 months from the date hereof, or until the reorganization provided in Section VI hereof shall have been completed, whichever shall be earlier, the provision of the preceding paragraph shall terminate and be of no effect; and from and after such date all licenses of motion pictures distributed by the New Picture Company or Warner Bros. Pictures, Inc. for exhibition in any theatre, regardless of its owner or operator, shall be in all respects subject to the terms of this judgment.

X

A. For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this judgment, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be pres- [fol. 55] ent, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment.

B. Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which

the United States is a party, or as otherwise required by law.

XI

A. For the purpose of any application under this judgment, the plaintiff and the Warner defendants, hereby waive the necessity of convening a court of three judges pursuant to the expediting certificate filed herein on June 13, 1945; and agree that any application may be determined by any judge sitting in the United States District Court for the Southern District of New York.

Any application by either party under this judgment shall be upon reasonable notice to the other.

B. Jurisdiction of this cause is retained for the purpose of enabling any of the parties and their successors to this consent judgment, and no others, to apply to the Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification or [fol. 56] carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Dated: January 4th, 1951.

AUGUSTUS N. HAND
United States Circuit Judge
HENRY W. GODDARD
United States District Judge
ALFRED C. COXE
United States District Judge

We hereby consent to the entry of the foregoing judgment.

For the Plaintiff

PEYTON FORD
Acting Attorney General

United States Attorney

WM. AMORY UNDERHILL
Acting Asst. Attorney General
PHILIP MARCUS
SIGMUND TIMBERG
Spec. Assts. to Atty. Gen.
MAURICE SILVERMAN
HAROLD LASSER
Trial Attorneys

[fol. 57] *For the Defendants*

WARNER BROS. PICTURES INC.
WARNER BROS. PICTURES DISTRIBUTING CORPORATION
WARNER BROS. CIRCUIT MANAGEMENT CORPORATION
By
JOSEPH M. PROSKAUER
ROBERT W. PERKINS
Their Attorneys

We hereby consent to the entry of Section VIII of the above judgment.

HARRY M. WARNER
ALBERT WARNER
JACK L. WARNER
By
STANLEIGH P. FRIEDMAN
Their Attorney

[fol. 58] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, PLAINTIFF,

against

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., et al., DEFENDANTS.

SUTPHEN ESTATES, INC., APPLICANT FOR INTERVENTION.

ORDER DENYING MOTION FOR LEAVE TO INTERVENE—February 26, 1951

Equity No. 87-273

This cause having come on for hearing on the 4th day of January, 1951 on the order to show cause herein dated January 2, 1951 made on the application of Sutphen Estates, Inc., why said Sutphen Estates, Inc. should not be granted leave to intervene in this cause, and this Court having heard argument on said motion prior to the signing on said date of the judgment made herein on the consent thereto of the United States of America, Warner Bros.

Pictures, Inc., Warner Bros. Distributing Corporation, Warner Bros. Circuit Management Corporation, and on the consent to Section VIII thereof by Harry M. Warner, Albert Warner and Jack L. Warner, and having announced at the conclusion of said argument its decision denying said motion, it is

Ordered, that the motion of Sutphen Estates, Inc. for leave to intervene in this cause is denied.

Dated: February 26, 1951

s/ AUGUSTUS N. HAND,
Circuit Judge.

s/ HENRY W. GODDARD,
District Judge.

s/ ALFRED C. COXE,
District Judge.

[fols. 59-60] UNITED STATES DISTRICT COURT

(Title omitted)

ORDER TO SHOW CAUSE ON MOTION TO INTERVENE—
January 2, 1951

On the annexed affidavit of Betram F. Shipman, sworn to the 2nd day of January, 1951; on the annexed Pleading in Intervention on behalf of Sutphen Estates, Inc.; and upon all of the pleadings and other papers filed and all of the proceedings heretofore had herein,

Let the parties affected by said pleading in intervention and their attorneys show cause at a term of this court to be held in Room 506 of the United States Court House, Foley Square, in the Borough of Manhattan, City, County and State of New York, on the 4th day of January, 1951, at 4 o'clock in the afternoon of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein granting leave to said Sutphen Estates, Inc. to intervene in this action in order to assert the claim set forth in the annexed Pleading in Intervention; and

Good cause being shown and sufficient reason appearing therefor, it is

[fol. 61] Ordered, that service of a copy of this order and of said Affidavit and of said Pleading in Intervention on the attorneys for plaintiff The United States of America, and on the attorneys for defendants Warner Bros. Pictures, Inc. Warner Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation on or before 12 o'clock noon of the 3rd day of January, 1951, shall be deemed good and sufficient service thereof.

Dated: New York, N. Y., January 2, 1951

AUGUSTUS N. HAND,
U.S.C.J.
HENRY W. GODDARD,
U.S.D.J.
ALFRED C. COXE,
U.S.D.J.

[fol. 62] UNITED STATES DISTRICT COURT

(Title omitted)

AFFIDAVIT

Bertram F. Shipman, being duly sworn, deposes and says:

1. I am a member of the firm of Mudge, Stern, Williams & Tucker, attorneys for Sutphen Estates, Inc., a New York corporation, the Intervener in the annexed Pleading in Intervention, and I am familiar with the matters relating ~~thereto and~~ herein set forth. I make this affidavit in support of an application for an Order to Show Cause directed to the parties in this action affected thereby, namely, plaintiff The United States of America, and defendants Warner Bros. Pictures, Inc. (hereinafter referred to as Warner), Warner Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation, granting leave to said Intervener to intervene in this action in order to assert the claim set forth in said Pleading in Intervention.

2. Intervener is the landlord of the very valuable property on the northwest corner of Broadway and 47th Street in the City of New York, New York on which is located

the Strand Theatre. Said property is under lease to Stanley Mark Strand Corporation (hereinafter referred to as [fol. 63] Tenant) for a term of 98 years beginning January 1, 1929, the lease as amended providing, among other things, for an annual rental, currently at the rate of $300,000 per annum in addition to taxes and other charges payable by Tenant, and including an obligation on the part of Tenant to alter and improve the buildings on the property, to secure which obligation Tenant is required to deposit with Intervener $100,000 a year for 10 years beginning with December 15, 1948, a total of $1,000,000 of which $300,000 has been so deposited to date. All obligations of tenant under the lease are unconditionally guaranteed by defendant Warner which owns approximately 99% of the stock of Stanley Company of America, which owns all of the stock of Tenant.

3. Upon information and belief, a judgment proposed to be consented to herein by plaintiff and Warner, among others, and proposed to be made and entered herein, provides for the transfer of all of the so-called exhibition assets of Warner to a new corporation in exchange for all of its capital stock, the transfer of all other assets of Warner to another new corporation in exchange for all of its capital stock, the distribution pro rata to stockholders of Warner of all of the shares of capital stock of said two new corporations and the dissolution of Warner; and directs that a plan of reorganization providing for such transfers, distribution and dissolution be submitted to stockholders of Warner for approval within 90 days from the date of said proposed consent judgment. Upon information and belief, said proposed consent judgment contains no express provisions preserving or protecting the rights of Intervener with respect to said guaranty by Warner and may contain provisions which may or may *not* be claimed to limit or restrict Warner in providing adequately for a substitute for its guaranty upon its dissolution.

4. Intervener's motion to intervene in this motion is made under Rule 24 of the Federal Rules of Civil Procedure as Amended, and is based upon the grounds that:

[fol. 64] (a) Intervener is so situated as to be adversely affected by a distribution or other disposition

of property which is in the custody or subject to the control or disposition of this court in connection with said consent judgment;

(b) representation of Intervener's interest by existing parties herein is or may be inadequate and Intervener is or may be bound by said consent judgment; and

(c) Intervener's claim and the main action herein insofar as said consent judgment is involved have questions of law and fact in common;

all as more fully appears from said Pleading in Intervention to which reference is hereby made.

5. I have discussed the claim set forth in said Pleading in Intervention with officers and other representatives of Intervener, and have considered said Lease and the agreements supplemental thereto, including the guaranty agreement of Warner and the agreements supplemental thereto, and on the basis of my investigation I believe and I have advised Intervener that the claim set forth in said Pleading in Intervention is a meritorious claim, and that Intervener should be permitted to intervene in this action in order to assert said claim, and in order that said consent judgment herein or other order made herein shall make adequate provision for the preservation or protection of the rights of Intervener with respect to the guaranty by Warner of the obligations set forth in said Lease as amended, and directing that an equivalent substitute be provided for said guaranty in connection with the transfer of Warner's assets and its dissolution as contemplated in said consent judgment.

[fol. 65] 6. The reason that this application is made by Order to Show Cause rather than by Notice of Motion is that an Order to Show Cause is necessary in order to bring on the Motion to Intervene herein before this court on the 4th day of January, 1951, when said proposed consent judgment is to be presented to this court.

7. No previous or other application has been heretofore made for the relief sought herein.

Wherefore it is respectfully requested that an order be made and entered herein granting leave to Intervener to intervene in this action in order to assert the claim set forth in said Pleading in Intervention, and granting to In-

tervener such other, further and different relief as in the premises may be just, equitable and proper.

Bertram F. Shipman

Duly sworn to by Bertram F. Shipman. Jurate omitted in printing.

[fol. 66] United States District Court

(Title omitted)

Pleading in Intervention—January 2, 1951

Sutphen Estates, Inc., the Intervener herein, for its Pleading in Intervention alleges as follows:

1. Sutphen Estates, Inc., the Intervener herein, is a corporation, duly organized and existing under the laws of the State of New York, having its principal office at No. 60 East 42nd Street, in the Borough of Manhattan, City, County and State of New York.

2. On or about December 31, 1928, a certain Lease bearing said date (hereinafter called the Lease) was duly made, executed and entered into by and between Intervener as landlord and Stanley Mark Strand Corporation, a New York corporation, as tenant (hereinafter called Tenant). Said lease covers the premises described therein on the northwest corner of Broadway and 47th Street in the City of New York, together with the buildings thereon which include the Strand Theatre. Said Lease is for a full term of approximately 98 years beginning at the date of said [fol. 67] Lease and ending December 31, 2026. By the terms of the Lease the current rental thereunder and until the end of the year 1952, is at the rate of Three Hundred Thousand Dollars ($300,000) per annum, payable in equal monthly installments in advance on the first day of each and every month. Thereafter and for successive periods of 21, 21, 21 and 11 years, respectively, the annual rental thereunder is to be five per cent (5%) of the appraised value of the land, or the annual rental payable during the last year of the preceding period, whichever is greater, all as determined and as provided in the Lease. Tenant is obligated in addition to pay taxes, water rates, assess-

ments, insurance premiums and other charges assumed by the Tenant and to be paid and discharged by the Tenant, all as in the Lease provided.

3. At all times herein referred to, Tenant has been and is a wholly owned subsidiary of Stanley Corporation of America, and said corporation has been and is a more than 90% owned subsidiary of Warner Bros. Pictures, Inc. (hereinafter called Warner).

4. Among the covenants to be performed by the Tenant under the Lease was a covenant set forth in Article Seventeenth of said Lease whereby Tenant agreed to demolish and remove the buildings upon the leased premises and to erect in place thereof a new Five Million Dollar ($5,000,000) theatre and office building within six years from January 1, 1929, at a cost and in the manner in the Lease provided.

5. On or about January 5, 1931, said new theatre and office building not having been built or commenced, at the request of Tenant and by an agreement dated January 5, [fol. 68] 1931 between Intervener and Tenant, the time for the erection and completion of such new building was extended to January 1, 1938, and simultaneously by an agreement dated June 5, 1931 between Intervener and Warner, said Warner, for valuable consideration and as an inducement to Intervener to grant such extension, guaranteed the prompt and faithful performance by Tenant of all the terms, covenants and conditions of the Lease as amended. Subsequently, at the requests of Tenant and by agreements between Intervener, Tenant and Warner dated April 4, 1934, April 1, 1937 and October 10, 1941, respectively, the Lease was further amended and supplemented and the time for the erection and completion of said new building was successively extended to January 1, 1953.

6. Subsequently, at the request of Tenant and Warner and by agreement between Intervener, Tenant and Warner dated as of December 15, 1948, Article Seventeenth of the Lease was deleted and a new Article Seventeenth was substituted which among other things provides for the alteration and improvement of the present buildings on the leased premises to modern two story and basement store office and commercial buildings with foundations and construction sufficient to support an eight story fireproof building, at an estimated cost of $1,000,000 all as elaborately provided

in said agreement. Said agreement of December 15, 1948 provides that Tenant shall pay to Intervener on the 15th day of December, 1948, of the sum of One Hundred Thousand Dollars ($100,000) and a like sum on the 15th day of December in each year thereafter, to and including the 15th [fol. 69] day of December, 1957, or an aggregate of One Million Dollars ($1,000,000) and that said amount shall be deposited by Intervener in a separate banking account captioned "Strand Theatre Building Trust Fund" and held by Intervener in trust as security against default of Tenant to alter and improve the buildings as provided in said agreement. In and by said agreement of December 15, 1948, Warner, as guarantor of the performance of the Lease by Tenant, approved and consented to said modification of the Lease, joined in the execution of said agreement of December 15, 1948, and agreed that Warner's said guaranty shall remain in full force and effect and shall include a guaranty of the performance by Tenant of all the obligations imposed upon and assumed by Tenant under the Lease as supplemented, amended and modified as above set forth, including all obligations imposed upon and assumed by Tenant by said agreement of December 15, 1948. Tenant has, to date, made three (3) annual payments into said Fund, totalling Three Hundred Thousand Dollars ($300,000), the last payment of One Hundred Thousand Dollars ($100,000) having been made on December 15, 1950.

7. Said Lease as so supplemented, amended and modified, and the guaranty by Warner of the obligations of Tenant thereunder, are and remain in full force and effect, and said guaranty by Warner constitutes a valid, effective and binding obligation of Warner to and for the benefit of Intervener.

8. Upon information and belief, in this action a judg- [fol. 70] ment, proposed to be consented to by plaintiff and defendant Warner, among others, (hereinafter called Consent Judgment), is to be presented to this Court, whereby, among other things, this Court will decree that a plan of reorganization shall be presented to the stockholders of Warner providing in part that:

(a) Two new corporations will be formed;

(b) To one of such new corporations there will be transferred all of the so-called exhibition assets of Warner,

which will include all of the shares of capital stock of Tenant, in exchange for all of the shares of capital stock of said new corporations;

(c) To the other of such new corporations there will be transferred all other assets of Warner in exchange for all of the shares of capital stock of said new corporation;

(d) All of the shares of capital stock of said two new corporations will be distributed pro rata to the stockholders of Warner; and

(e) Warner will thereafter be dissolved.

Upon information and belief, the Consent Judgment will further provide that prior to or at an early date after the transfer of the exhibition assets of Warner to said new corporation a substantial number of theatre properties included among said exhibition assets shall be disposed of.

9. Said proposed plan of reorganization, if adopted and carried out as provided by the Consent Judgment, will [fol. 71] destroy, and deprive Intervener of its valuable rights in, to and under said guaranty of Warner, which is a valid, subsisting obligation, unrelated to any anti-trust violations by Warner or by any other defendant herein, and the destruction of which is unnecessary to full compliance by Warner and the other Warner defendants with the Final Decree of this Court made herein dated February 6, 1950.

10. Upon information and belief, said proposed plan of reorganization as provided in the Consent Judgment is not required by said Final Decree; that said Final Decree, although providing for a divorcement of the exhibition business of Warner from its production and distribution business, afforded to Warner wide latitude in the formulation of a plan to comply with such divorcement provisions; and that the plan as provided in the Consent Judgment was selected by Warner in preference to numerous other alternatives as most advantageous economically or otherwise to the stockholders of Warner.

11. Upon information and belief the Consent Judgment although providing for the transfer by Warner of all of its assets and its dissolution, as aforesaid, contains no express provision for the preservation or protection of Intervener's rights in respect of said guaranty obligations of Warner nor for an equivalent substitute for said guaranty obliga-

tions, and no provision for such preservation or protection or for such an equivalent substitute is or will be made in or in connection with said plan of reorganization or the transfer of the assets of Warner or its dissolution.

[fol. 72] 12. Upon information and belief, unless the Consent Judgment or other order or judgment made in this action and/or said plan of reorganization provides for such preservation or protection or for an equivalent substitute for said guaranty obligations of Warner, which should include in any event the joint and several assumption of said guaranty obligations by said two new corporations, said transfer of the assets of Warner and its dissolution after the contemplated distribution to its stockholders, will destroy the valuable rights of Intervener in said guaranty obligations, to the immediate, great and irreparable damage of Intervener, and Intervener will be deprived of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States of America.

13. Upon information and belief, Intervener is entitled to intervene as of right in this action under Rule 24 of the Federal Rules of Civil Procedure as Amended upon the ground that under the circumstances herein set forth Intervener is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of this court by virtue of the Consent Judgment, and upon the further ground that representation of Intervener's interest by existing parties in this action is or may be inadequate and that Intervener is or may be bound by the Consent Judgment.

14. Upon information and belief Intervener is entitled to be permitted to intervene in this action under Rule 24 of the Federal Rules of Civil Procedure as Amended upon the ground that Intervener's claim and the main action herein insofar as the Consent Judgment is involved have questions of law and fact in common.

[fol. 73] 15. Intervener has no adequate remedy save by intervention in this action, to avoid the immediate, great and irreparable damage to it which would result from the making and entry herein of the Consent Judgment without adequate provision being made in the Consent Judgment or

other order of this Court in this action for the preservation or protection of Intervener's valuable rights as hereinabove set forth.

Wherefore, Intervener respectfully prays:

(a) That Intervener be permitted to intervene in this action for the purpose of asserting the claim herein set forth;

(b) That this Court refrain from signing the Consent Judgment unless and until the Consent Judgment and the plan of reorganization of Warner provided for therein are amended to assure preservation of said guaranty obligations of Warner or to provide a fully equivalent substitute for such guaranty obligations which shall include an assumption of said guaranty obligations jointly and severally by the two new transferee corporations proposed to be formed;

(c) In the alternative, that this Court by separate order made herein direct that said guaranty obligations be preserved, or that a fully equivalent substitute therefor be provided which shall include an assumption of said guaranty obligations jointly and severally by the two new transferee corporations proposed to be formed; and

[fol. 74] (d) That Intervener have such other, further and different relief as in the premises may be just, equitable and proper.

Dated: New York, N. Y., January 2, 1951.

Bertram F. Shipman, of
Mudge, Stern, Williams & Tucker,
Attorneys for Intervener,
Office and P. O. Address,
40 Wall Street,
New York 5, N. Y.

[fol 75] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

Equity No. 87-273

United States of America, Plaintiff,

against

Paramount Pictures, Inc.: Paramount Film Distributing Corporation; Loew's Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, Defendants

Before Augustus N. Hand, Circuit Judge; Henry W. Goddard and Alfred C. Coxe, District Judges

Herbert A. Bergson, Assistant Attorney General; Robert L. Wright and J. Francis Hayden, Special Assistants to the Attorney General; George H. Davis, Jr., and Harold Lasser, Special Attorneys, for United States of America.

Davis Polk Wardwell Sunderland & Kiendl; J. Robert Rubin, Attorneys for Defendant Loew's, Inc.; John W. Davis, J. Robert Rubin, S. Hazard Gillespie, Jr., and Benjamin Melniker, Counsel.

Joseph M. Proskauer and Robert W. Perkins, Attorneys for the Warner defendants; Joseph M. Proskauer, Robert W. Perkins, J. Alvin Van Bergh, Howard Levinson, and Harold Berkowitz, Counsel.

James F. Byrnes, Dwight Harris Koegel & Caskey, Attorneys for Twentieth Century-Fox Film Corporation and National Theatres Corporation, Defendants; James F. Byrnes, Otto E. Koegel, John F. Caskey, and Frederick W. R. Pride, Counsel.

[fol. 76] Schwartz & Frohlich, Attorneys for Defendant Columbia; Louis D. Frohlich and Everett A. Frohlich, Counsel.

Charles D. Prutzman, Attorney for the Universal Defendants; Cyril S. Landau, Counsel.

O'Brien, Driscoll & Raftery, Attorneys for the Defendant United Artists Corporation; Edward C. Raftery and George A. Raftery, Counsel.

Opinion

Augustus N. Hand, Circuit Judge:

This case comes before us after a decision by the Supreme Court affirming in part and reversing in part our decree and findings of December 31, 1946. United States v. Paramount Pictures, Inc., 334 U. S. 131. Under our findings of fact, we held that there had been violations of Sections 1 and 2 of the Sherman Anti-Trust Act which were summarized in the conclusions of law as follows:

"7. The defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros Pictures, Inc.; Vitagraph, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, * * * in violation of the Sherman Act by:

"(a) Acquiescing in the establishment of a price fixing system by conspiring with one another to maintain theatre admission prices;

[fol. 77] "(b) Conspiring with each other to maintain a nationwide system of runs and clearances which is substantially uniform in each local competitive area.

"8. The distributor defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Twentieth Century-Fox Film Corporation; Co-

lumbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, * * * in violation of the Sherman Act by:

"(a) Conspiring with each other to maintain a nation-wide system of fixed minimum motion picture theatre admission prices;

"(b) Agreeing individually with their respective licensees to fix minimum motion picture theatre admission prices;

"(c) Conspiring with each other to maintain a nation-wide system of runs and clearances which is substantially uniform as to each local competitive area;

"(d) Agreeing individually with their respective licensees to grant discriminatory license privileges to theatres affiliated with other defendants and with large circuits as found in finding No. 110 above;

"(e) Agreeing individually with such licensees to grant unreasonable clearance against theaters operated by their competitors;

"(f) Making master agreements and franchises with such licensees;

[fol. 78] "(g) Individually conditioning the offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films, except in the case of the United Artists Corporation;

"(h) The defendants Paramount and RKO making formula deals.

"(9) The exhibitor-defendants, Paramount Pictures, Inc.; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; Keith-Albee Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corpoation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures * * * in violation of the Sherman Act by:

"(a) Jointly operating motion picture theatres with each

other and with independents through operating agreements or profit-sharing leases;

"(b) Jointly owning motion picture theatres with each other and with independents through stock interests in theatre buildings;

"(c) Conspiring with each other and with the distributor-defendants to fix substantially uniform minimum motion pictures theatre admission prices, runs, and clearances;

"(d) Conspiring with the distributor-defendants to discriminate against independent competitors in fixing minimum admission price, run, clearance, and other license terms."

As a remedy for the violations which we have summarized above, we held that a system of competitive bidding for film licenses should be introduced, saying in Finding 85 that:

"Competition can be introduced into the present system [fol. 79] of fixed admission prices, clearances, and runs, by requiring a defendant-distributor when licensing its features to grant the license for each run at a reasonable clearance (if clearance is involved) to the highest bidder, if such bidder is responsible and has a theatre of a size, location, and equipment adequate to yield a reasonable return to the licensor. In other words, if two theatres are bidding and are fairly comparable, the one offering the best terms shall receive the license. Thus, price fixing among the licensors or between a licensor and its licensees as well as as the non-competitive clearance system may be terminated."

We also said in Finding 111 that the granting of discriminatory license privileges would be impossible under such a system of competitive bidding as we have mentioned. In addition to providing a system of competitive bidding, we enjoined the unlawful practices above referred to, other than discrimination in granting license, which was sufficiently obviated by the provisions for competitive bidding.

In connection with the foregoing, we denied the application of the plaintiff to divest the major defendants of their theatres on the ground that such a remedy was too harsh and that the system of competitive bidding when coupled with the injunctive relief against the practices we found

to be unlawful was adequate relief, at least until the efficiency of that system had been tried and found wanting. We held that the root of the lack of competition lay not in the ownership of many or most of the best theatres, but in the illegal practices of the defendants, which we believed would be obviated by the remedies we proposed. We examined the theatre holdings of the major defendants, found that they aggregated only about 17% of all theatres in the United States, and held that these defendants by such theatre holdings alone did not collectively or individually have a monopoly of exhibition. While we did not find in [fol. 80] express terms that there was no monopoly in first-run exhibition, we did review the statistics as to the first-run ownership in the 92 largest cities and stated in our opinion of June 11, 1946, that the defendants were not to be viewed collectively in determining the question of monopoly. See 66 F. Supp. 323, 354. We also found no substantial proof that any of the corporate defendants was organized or had been maintained for the purpose of achieving a national monopoly. Finding No. 152. Likewise, even as to localities where one defendant owned all first-run theatres, we found no sufficient proof of purpose to create a monopoly or that the total ownership in such places had not rather arisen from the inertness of competitors, their lack of financial ability to build comparable theatres, or from the preference of the public for the best equipped theatres. Finding No. 153.

In its opinion remanding the case for further consideration in certain respects, the Supreme Court affirmed our findings as to price-fixing, runs, clearances, and discriminatory licenses and other practices which we found to be unlawful, with certain minor reservations as to the unlawfulness of joint interests and franchises. It eliminated, however, the provisions of our decree for competitive bidding "so that a more effective decree may be fashioned," adding by way of caution that: "The competitive bidding system was perhaps the central arch of the decree designed by the District Court. Its elimination may affect the cases in ways other than those which we expressly mention. Hence on remand of the cases the freedom of the District Court to reconsider the adequacy of decree is not limited to those parts we have specifically indicated." [334 U. S.

at p. 166]. It directed our further consideration of mon-[fol. 81] opoly, divestiture and expansion of theatre holdings, giving as one reason the following: "As we have seen, the District Court considered competitive bidding as an alternative to divestiture in the sense that it concluded that further consideration of divestiture should not be had until competitive bidding had been tried and found wanting. Since we eliminate from the decree the provisions for competitive bidding, it is necessary to set aside the findings on divestiture so that a new start on this phase of the cases may be made on their remand." [334 U. S. at p. 175.]

As further reasons for directing a reconsideration of the above issues, we were asked to determine whether the vertical integration of the major defendants, which was held not to be unlawful *per se*, was conceived with an intent to monopolize or was of such a character as to confer a known monopoly power. If the power be established, a specific intent to monopolize need not be shown. As was said by Justice Douglas in United States v. Griffith, 334 U. S. 100, 105, and referred to in United States v. Paramount, 334 U. S. 131, 173:

> "It is, however, not always necessary to find a specific intent to restrain trade or to build a monopoly in order to find that the anti-trust laws have been violated. It is sufficient that a restraint of trade or monopoly results as the consequence of a defendant's conduct or business arrangements. United States v. Patten, 226 U. S. 525, 543; United States v. Masonite Corp., 316 U. S. 265, 275. To require a greater showing would cripple the Act. As stated in United States v. Aluminum Co. of America, 148 F. 2d 416, 432, 'no monopolist monopolizes unconscious of what he is doing.' Specific intent in the sense in which the common law used the term is necessary only where the acts fall short of the results condemned by the Act."

[fol. 82] In dealing with the effect of vertical integration upon monopoly, the opinion of the Supreme Court directs us to consider more explicitly than we did in our original opinion whether monopoly exists as to the first-

run theatres throughout the nation, in the 92 largest cities, and in local situations.

It also directs us to determine whether there has been a geographic distribution of theatre ownership among the major defendants. The opinion also says:

> "It is clear, so far as the five majors are concerned, that the aim of the conspiracy was exclusionary, i.e. it was designed to strengthen their hold on the exhibition field. In other words, the conspiracy had monopoly in exhibition for one of its goals, as the District Court held. Price, clearance, and run are interdependent. The clearance and run provisions of the licenses fixed the relative playing positions of all theatres in a certain area; the minimum price provisions were based on playing position—the first-run theatres being required to charge the highest prices, the second-run theatres the next highest, and so on. As the District Court found, 'In effect, the distributor, by the fixing of minimum admission prices, attempts to give the prior-run exhibitors as near a monopoly of the patronage as possible.'
>
> "It is, therefore, not enough in determining the need for divestiture to conclude with the District Court that none of the defendants was organized or has been maintained for the purpose of achieving a 'national monopoly,' nor that the five majors through their present theatre holdings 'alone' do not and cannot collectively or individually have a monopoly of exhibition. For when the starting point is a conspiracy to effect a monopoly through restraints of trade, it is [fol. 83] relevant to determine what the results of the conspiracy were even if they fell short of monopoly." [334 U. S. at pp. 170-171.]

We were also directed to determine whether any "illegal fruits" were acquired or maintained by the defendants as results of unlawful conspiracies and to divest any such fruits, irrespective of whether monopoly had in fact been achieved. The plaintiff has not introduced evidence to support any claim of divestiture of "illegal fruits" and expressly reserves the presentation of such an issue for the future.

Because of the view of the Supreme Court as to matters to be specially considered on the remand as well as its view regarding other matters which it left open for consideration by this court, it set aside our findings on monopoly and divestiture and our provisions prohibiting further theatre expansion and our provisions for competitive bidding, in order that "the District Court should be allowed to make an entirely fresh start on the whole of the problem."

Although we previously held in Finding No. 154 that the illegalities and restraints were not in the ownership of theatres by the major defendants but in their unlawful practices, this finding was made because of our view that the competitive bidding system, when coupled with injunctions, would terminate the illegalities, and if such illegalities were terminated, the theatre ownerships alone would not be unlawful. This interpretation of our finding is justified by our former conclusion that divestiture should not be tried unless the competitive bidding system was found wanting. In other words, if theatre ownership were regarded as under no circumstances related to violations of the Sherman Act, divestiture could not be a proper remedy and would not have been suggested as a possible alternative in our former opinion.

[fol. 84] Similarly, our Findings 152 and 153 that none of the defendants had been organized or maintained to achieve a national monopoly in production, distribution, or exhibition, or a local monopoly in first-run theatre ownership should be read in the light of the remedy we adopted. The provisions for competitive bidding were thought to have eliminated the conspiracies which had theretofore existed among the defendants in their capacities both as distributors and exhibitors and between defendants and independents, in which the defendants had cooperated and aided one another through certain illegal practices. We accordingly treated the defendants as no longer able to engage in illegal practices and the public sufficiently safeguarded by the requirement of competitive bidding and the injunctions against such practices. These safeguards we thought applied to the national market as well as to local situations. Our conclusion of law that the defendants had attempted to monopolize was correct as

to their prior acts, unaffected by our decree. And so the Supreme Court understood us to mean when it said: "In other words, the conspiracy had monopoly in exhibition for one of its goals, as the District Court held." [334 U. S. at p. 170]. With the elimination of competitive bidding, as we shall see from our future discussion, our Findings numbered 152 and 153 would not be justified, and should be vacated.

A review of the illegalities which we, and the Supreme Court as well, have found to exist, in addition to a consideration of geographical distribution and very general absence of competition between the major defendants, convinces us that in the absence of a system of competitive bidding, the theatre holdings of the major defendants have played a vital part in effecting violations of the Sherman Anti-Trust Act.

[fol. 85] We have held that all of the defendants fixed substantially the same price for each theatre in which they licensed their films. This system was general and affected most of the theatres in the United States. We likewise held that the system restricted competition between the theatres of the major defendants and those of independents. The system also plainly restricted competition between the theatres of the major defendants in those areas where such theatres were in competition with one another, since the minimum price to be charged by any theatre licensee was fixed and the licensee was prevented from competing in the business of exhibition by lowering his price. That these restrictions on competition were one of the primary objectives of the price-fixing conspiracy was noted in our former opinion, where we said that:

> "* * * all of the five major defendants had a definite interest in keeping up prices in any given territory in which they owned theatres, and this interest they were safeguarding by fixing minimum prices in their licenses when distributing their films to independent exhibitors in those areas. Even if the licenses were at a flat rate, a failure to require their licensees to maintain fixed prices would leave them free by lowering the current charge to decrease through competition the income in the licensors' own theatres in the neighborhood." (66 F. Supp. 335-6.)

In discussing the foregoing practices, Mr. Justice Douglas said in his opinion:

"The District Court found that two price-fixing conspiracies existed—a horizontal one between all the defendants; a vertical one between each distributor-defendant and its licensees. The latter was based on express agreements and was plainly established. The [fol. 86] former was inferred from the pattern of price-fixing disclosed in the record. We think there was adequate foundation for it too. It is not necessary to find an express agreement in order to find a conspiracy. It is enough that a concert of action is contemplated and that the defendants conformed to the arrangement. Interstate Circuit v. United States, 306 U. S. 226- 227; United States v. Masonite Corp., 316 U. S. 265, 275. That was shown here." (334 U. S. at p. 142.)

It seems obvious from the foregoing that complete freedom from price competition among theatre holders could only be obtained if prices were fixed by all distributors, and such a result was substantially obtained. Consequently, the system of theatre licensing had a vital and all-pervasive effect in restricting competition for theatre patronage.

In our Finding 72 we held that: "The differentials in admission price set by a distributor in licensing a particular feature in theatres exhibiting on different runs in the same competitive area are calculated to encourage as many patrons as possible to see the picture in the prior-run theatres" and thus the distributor "attempts to give the prior-run exhibitors as near a monopoly of the patronage as possible." This policy not only benefitted the distributors in securing to them a maximum rental income from their films, but also benefited the major defendants as exhibitors, since they were by far the largest owners of first-run theatres in the country.

The fixed system of runs and clearances which we found involved a cooperative arrangement among the defendants, was also designed to protect their theatre holdings and safeguard the revenue therefrom. Like the system of fixed prices, it could only succeed in eliminating competi-

tion if the defendants generally cooperated in maintaining [fol. 87] it, as we have held they did. The major defendants' predominant position in first-run theatre holdings was strongly protected by a fixed system of clearances and runs. As we said in our former opinion:

> "The evidence we have referred to shows that both independent distributors and exhibitors when attempting to bargain with the defendants have been met by a fixed scale of clearances, runs, and admission prices to which they have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition either with the defendants' theatres or with theatres to which the latter have licensed their pictures. Under the circumstances disclosed in the record there has been no fair chance for either the present or any future licensees to change a situation sanctioned by such effective control and general acquiescence as have obtained." (66 F. Supp. at p. 346.)

Our view was confirmed by Mr. Justice Douglas as follows:

> "Clearances have been used along with price fixing to suppress competition with the theatres of the exhibitor defendants and with other favored exhibitors." (334 U. S. 131, 148.)

While we pointed out in our former opinion that there was discrimination in clearance and run by distributors and theatre holders in particular instances, such as Goldman Theatres v. Loew's, 150 F. 2d 738 (C.A. 3), and Bigelow v. RKO Radio Pictures, Inc., 150 F. 2d 877 (C.A. 7), reversed on other grounds, 327, U. S. 251, we concluded that we could not say upon the facts before us that this discrimination was general. Nevertheless, as already stated, we held that the defendants had set up a [fol. 88] system of fixed runs and clearances which prevented any effective competition by outsiders. This system, in the absence of competitive bidding which has now been rejected, gave the defendants a practical control over the run and clearance status of any given theatre and irrespective of the extent of local discriminations violated

the Sherman Act. It involved discrimination against persons applying for licenses and seeking runs and clearances for their theatres, because they had no reasonable chance to improve their status by building or improving theatres while the major defendants possessed superior advantages. Therefore, though the evidence was insufficient to convince us that there was discrimination in negotiation for clearances and runs theatre by theatre, because it was well-nigh impossible to establish that a particular clearance or run was not refused because of the inadequacy of the applicant's theatre, the system of clearances and runs was such as to make competition against the defendants practically impossible.

As we have held, the licensing agreements in use by the defendants discriminated against small independents in favor of the larger circuits of affiliated and unaffiliated theatres. This discrimination was effected through formula deals and certain privileges frequently granted to large circuits in franchises and master agreements. They not only showed discrimination against small theatre owners, but in many instances also showed cooperation among the major defendants in their respective capacities as distributors and exhibitors. The minor defendants as distributors acceded to and cooperated with these restrictions, which excluded small independents.

Formula deals and certain master agreements, both of which involved licenses to more than one theatre, and [fol. 89] frequently to affiliated or large independent circuits, permitted the exhibitor to allocate film rental and playing time and thus precluded other theatre owners from the opportunity of competing for films theatre by theatre. While the Supreme Court has said that franchises are not necessarily objectionable *per se*, the defendants in various instances coupled their franchises with contract provisions which were not included in the standard forms of contract under which small independents were licensed. These provisions, which at times conferred great competitive advantages upon those receiving them, were:

> "Suspending the terms of a given contract, if a circuit theatre remains closed for more than eight weeks, and reinstating it without liability upon reopening; allowing large privileges in the selection and

elimination of films; allowing deductions in film rentals if double bills are played; granting moveovers and extended runs; granting road show privileges; allowing overage and underage; granting unlimited playing time; excluding foreign pictures and those of independent producers; granting rights to question the classification of features for rental purposes." (Finding 110.)

We have been instructed by the Supreme Court to consider the question of geographical distribution of theatres among the five major defendants. In dealing with this subject, we do not take into account the presence or absence of independent theatres in the areas dealt with. We have examined the defendants' theatre holdings and find that in cities of less than 100,000 in population, there is no doubt that Paramount, Warner, Fox and RKO owned or operated theatres either in largely separate market areas or in pools, without more than trifling competition among themselves or with Loew's. In cities having a [fol. 90] population of more than 100,000, there was in general little competition among the defendants, although considerably more than in towns of under 100,000. A summary of the data which substantially represents the true situation, but owing to certain differences in the proofs offered must be regarded as approximate rather than as entirely accurate, is as follows:

Cities of Less Than 100,000

In cities of less than 100,000, Paramount had complete or partial interests in or pooling agreements* with other defendants affecting 1,236 theatres located in 494 towns. In 13 of these towns containing 31 of the theatres—or only 3%—there was competition with another defendant. In 9% of these towns competition between Paramount and the only other defendant in the town was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres; and in this 9%

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* Pooling agreements and joint interests among defendants are treated as indistinguishable for the purpose of summarizing geographical distribution.

were located 10% of Paramount's theatre interests. And in 88% of the towns, containing 87% of Paramount's theatre interests, Paramount was the only defendant operating theatres. Thus it appears that there was little, if any, competition between Paramount and any other defendant in 97% of the towns of under 100,000 and in respect to 97% of the theatres in which Paramount had an interest.

Fox had similar theatre interests in 428 theatres located in 177 towns. In 13 of these towns containing 29 Fox theatres, or about 7% thereof, there was competition with another defendant. In about 93% of the towns containing the same percentage of Fox's theatre interests, Fox was the only defendant operating theatres.

Warner had similar theatre interests in 306 theatres located in 155 towns of less than 100,000. In 17 towns, or 11%, containing 30 Warner theatres, or 10% of its hold- [fol. 91] ings, there was competition with another major defendant. In 3% of the towns, competition between Warner and the only other defendant in the town was substantially lessened or eliminated by means of pooling agreements; and in this 3% were located 4% of Warner's theatre interests. In 86% of the towns containing the same percentage of Warner's theatre interests, Warner was the only defendant operating theatres. Thus, there appears to have been little, if any, competition between Warner and any other defendant in 89% of the towns and in respect to 90% of the theatres in which Warner had an interest.

Loew had interests in only 17 theatres located in 14 towns. In 4 towns, or 29%, containing 4 Loew theatres, or 23%, there was competition with another defendant. In 14% of the towns, competition was substantially lessened or eliminated by means of pooling agreements; and in this 14% were located 18% of Loew's theatre interests. In 57% of the towns, containing 59% of Loew's theatre interests, Loew was the only defendant operating theatres. Thus, there appears to have been little, if any, competition between Loew and any other defendant in 71% of the towns and in respect to 77% of the theatres in which Loew had an interest. It is to be noted, however, that Loew's theatre interests in towns of less than 100,000

constitute a far smaller proportion of its total theatre holdings than do those of the other defendants.

RKO had interests in 150 theatres located in 66 towns. In 6 towns, or 10%, containing 6 RKO theatres, or 4%, there was competition with another major defendant. In 60% of the towns, competition was substantially lessened or eliminated by means of pooling agreements, and in this 60% were located 73% of RKO's theatre interests. In 30% of the towns, containing 23% of RKO's theatre interests, RKO was the only defendant operating theatres. [fol. 92] Thus, there appears to have been little, if any, competition between RKO and any other defendant in 90% of the towns and in respect to 96% of the theatres in which RKO had an interest.

As a further illustration of the absence of substantial competition among the five major defendants in towns of less than 100,000 population, the proofs as to their total theatre holdings make the following showing which seems to us impressive. They had interests altogether in 2,020 theatres located in 834 towns. In 26 towns, or 3%, containing 100 of their theatres, or 5%, there was competition among some of them. In somewhat over 5% of the towns, competition between them was substantially lessened or eliminated by means of pooling agreements, and in this 5% were located 7% of their theatre interests. And in somewhat less than 92% of the towns, containing 88% of their theatre interests, only one of the major defendants owned theatres in the area. Thus, there appears to have been little, if any, competition among the five defendants or any of them in 97% of the towns and in respect to 95% of the theatres in which they had an interest.

It appears from the foregoing that the effect of the geographical distribution in towns having population of less than 100,000 was largely to eliminate competition among all of the defendants in the areas where any of them had theatres. The details upon which our results have been based appear in the statistical data set forth at the end of the opinion in Appendix 1.

Cities of 100,000 and Over

In cities of over 100,000 Paramount had complete or partial interests in or pooling agreements with other defendants affecting 352 theatres in 49 cities. In 18 of these cities, or 37%, containing 91 Paramount theatres, or [fol. 93] 26%, there was competition with other defendants. In an additional 10% of the cities, containing 17% of Paramount's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with Paramount, both on first and later runs, that competition with Paramount was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 12% of these cities competition between Paramount and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 12% were located 18% of Paramount's theatre interests. And in 41% of the cities, containing 39% of Paramount's theatre interests, Paramount was the only defendant operating theatres. Thus, it appears that there was little, if any, competition between Paramount and any other defendant in 63% of the cities of over 100,000 and in respect to 74% of the theatres in which Paramount had an interest.

Fox had similar theatre interests in 211 theatres located in 17 cities. In 5 of these cities, or 29%, containing 54 Fox theatres, or 26%, there was competition with other defendants. In an additional 18% of the cities, containing 41% of Fox's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with Fox, both on first and later runs, that competition with Fox was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 53% of the cities, containing 33% of Fox's theatre interests, Fox was the only defendant operating theatres. Thus, it appears that there was little, if any, competition between Fox and any other defendant in 71% of the cities and in respect to 74% of the theatres in which Fox had an interest.

[fol. 94] Warner has similar theatre interests in 243 theatres located in 26 cities. In 14 of those cities, or 54%, containing 89 theatres, or 37%, there was competition with

other defendants. In an additional 8% of the cities, containing 5% of Warner's theatre holdings, there were other ~~defendants having theatre~~ interests, but those interests were so relatively small as compared with Warner, both on first and later runs, that competition with Warner was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 19% of these cities competition between Warner and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 19% were located 51% of Warner's theatre interests. And in 19% of the cities, containing 7% of Warner's theatre interests, Warner was the only defendant operating theatres. Thus, it appears that there was little, if any, competition between Warner and any other defendant in 46% of the cities and in respect to 63% of the theatres in which Warner had an interest.

Loew had similar theatre interests in 144 theatres located in 37 cities. In 32 of those cities, or 86%, containing 122 Loew theatres, or 85%, there was competition with other defendants. In 3% of these cities, competition between Loew and the only other defendant in the city was eliminated by means of a pooling agreement affecting all of their theatres, and in this 3% were located 7% of Loew's theatre interests. And in 11% of the cities, containing 8% of Loew's theatre interests, Loew was the only defendant operating theatres. Thus, it appears that there was little, if any, competition between Loew and any other defendant in 14% of the cities and in respect to 15% of the theatres in which Loew had an interest. In the matter of mere geographical distribution of its theatres, Loew has the most favorable record of any of the major defendants. [fol. 95] But it is to be noted that, while it is true that as to its neighborhood prior run theatres in New York, there was competition with RKO in the sense that both operated in New York on the same runs, nevertheless these two companies divided the product of the various defendant distributors under a continuing arrangement so that there was no competition between them in obtaining pictures. Indeed, on one occasion where Paramount was having a long dispute with Loew's as to rental terms for Paramount films to be shown in Loew's New York neighborhood cir-

cuit of theatres, no attempt was made by Paramount to lease its films to RKO for exhibition in the latter's circuit, nor was any effort made by RKO to procure Paramount films as they both evidently preferred to adhere to the existing arrangement, under which Loew's circuit consistently exhibited the films of itself, Paramount, United Artists, Columbia and half of Universal, while RKO exhibited the films of itself, Fox, Warner, and half of Universal. Accordingly, we think that the showing that 85% of Loew's theatres are in competition with theatres of other defendants is misleading and may properly be reduced by the exclusion of its New York neighborhood theatres. If this is done, it would give Loew a percentage of approximately 42% of its theatres in competition with other defendants in cities over 100,000.

RKO had similar theatre interests in 256 theatres in 31 cities. In 22 of these cities, or 72%, containing 190 theatres, or 74%, there was competition with other defendants. In an additional 6% of the cities, containing 4% of RKO's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with RKO, both on first and later runs, that competition with RKO was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 16% [fol. 96] of these cities, competition between RKO and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 16% were located 15% of RKO's theatre interests. And in 6% of the cities, containing 7% of RKO's theatre interests, RKO was the only defendant operating theatres. Thus, it appears that there was little, if any, competition between RKO and other defendants in 28% of the cities and in respect to 26% of the theatres in which RKO had an interest. With respect to mere geographical distribution, RKO's record was relatively good but it is to be noted that approximately 58% of its theatre interests were located in New York on neighborhood runs, and the same comments as to distribution of film made in regard to Loew's are applicable to RKO. If its New York neighborhood theatre interests were excluded from the category of theatres in competition with other defendants, the RKO percentage would

then be only about 16% in competition with other defendants.

The major defendants had interests altogether in 1,112 theatres located in 87 cities of more than 100,000. In 46% of these cities, containing 23% of their theatre interests, only one of the major defendants owned theatres in the area. In 11.5% of the cities, competition between them was substantially lessened or eliminated by means of pooling agreements, and in this 11.5% were located 16% of their theatre holdings. In an additional 11.5% of the cities, containing 17% of their theatre interests, there was more than one defendant having theatre interests in the city, but the position of one defendant was so dominant relative to the others that competition between them was unsubstantial. In 31% of the cities, containing 44% of their theatre interests, there was competition among the [fol. 97] defendants. But the New York neighborhood theatres of Loew and RKO, which are included in reaching the 44% figure, should properly be excluded because there is no competition between Loew and RKO in obtaining pictures for the reasons we have already given. This would reduce the percentage of defendants' theatres which compete with one another to 27.

It appears from the foregoing that the effect of the geographical distribution in cities having a population of more than 100,000 was substantially to limit competition among the major defendants. The details upon which our results have been based appear in the statistical data set forth at the end of the opinion in Appendix 2.

The statistics contained in both Appendix 1 and Appendix 2 are derived from data submitted at the original trial and show the situation in 1945. Since the entry of our original decree, these figures have not been substantially changed as to towns of under 100,000, but have been somewhat changed, principally by the dissolution of pools pursuant to our decree, in the case of cities of more than 100,000. The situation in 1945, however, would seem to be far more important in determining whether violations of the Sherman Anti-Trust Act occurred than the status existing after the defendants had been found guilty of wrongs and were merely taking steps to carry out our remedial decree. For this reason, we have included statis-

tics relating to the conduct of Paramount and RKO, even though the remedies against them are now provided under consent decrees.

The plaintiff contends that the figures as to geographical distribution require a finding that there was an agreement to divide territory, but the evidence indicates that much of the acquisition of theatres was due to the buying up of circuits and that the purchases at least in some of these [fol. 98] cases involved competition among certain of the defendants. We, therefore, do not find an agreement to divide territory geographically in the organization of the defendants' theatre circuits, but we do hold that the geographical distribution became a part of a system in which competition was largely absent and the status of which was maintained by fixed runs, clearance and prices, by pooling agreements and joint ownerships among the major defendants, and by cross-licensing which made it necessary that they should work together. The argument of some of the defendants that they had no opportunity to change this geographical status not only seems inherently improbable but affirmatively contradicted by the making of pooling agreements and entering into joint ownerships with one another. Moreover, even in the relatively few areas where more than one of the major defendants had theatres, competition for first-run licensing privileges was generally absent because the defendants customarily adhered to a set method in the distribution and playing of their films. In substantiation of the general picture, the plaintiff has shown, on the basis of a study of four seasons between the years 1936 and 1944, that during this period the privilege of first-run exhibition of a defendant's films was ordinarily transferred from one defendant to another only as the result of dissolution of a theatre operating pool or an arbitrary division of the product knows as a "split". The lack of competition which we have described has undoubtedly been induced in large measure by the reliance of the defendants on each other in obtaining pictures for use in their various theatres throughout the country. The defendants were also dependent on one another to obtain theatre outlets for their own pictures, for the best customers of any defendant were ordinarily one or more of the other defendants.

[fol. 99] We think that there can hardly be adequate competition among the defendants where such interdependence exists. Moreover, when the defendants were interdependent as to a great part of their activities, it necessarily would affect not only competition among themselves, but with independents. We have already found such effects in the various concerted practices of the defendants which have restricted competition with independents. In our former opinion, we provided for a system of competitive bidding for film in the belief that such a system would sufficiently control the reliance of the major defendants on one another's product and theatres. That system having been rejected by the Supreme Court, we must find some other means of preventing the major companies from being in a state of interdependence which too greatly restricts competition.

One of the chief matters referred to us by the Supreme Court is the effect of vertical integration upon competition in the industry. While vertical integration would not *per se* violate the Sherman Act, the Supreme Court has made it clear that if such integration is conceived with a specific intent to control the market or creates a power to control the market which is accompanied by an intent to exercise the power, the intergration becomes illegal.

We are not satisfied that the plaintiff has shown a calculated scheme to control the market in the conception of the defendants' vertical integration, rather than a purpose to obtain an outlet for their pictures and a supply of film for their theatres. But here we are presented with a conspiracy among the defendants to fix prices, runs and clearances which we have already pointed out was powerfully aided by the system of vertical integration of each [fol. 100] of the five major defendants. Such a situation has made the vertical integrations active aids to the conspiracy and has rendered them in this particular case illegal, however, innocent they might be in other situations. We do not suggest that every vertically integrated company which engages in restraints of trade or conspiracies will thereby render its vertical integration illegal. The test is whether there is a close relationship between the vertical integration and the illegal practices. Here the vertical integrations were a definite means of carrying

out the restraints and conspiracies we have described. Moreover, we concluded in our prior findings, and the Supreme Court has affirmed our conclusion, that the distribution practices of the defendants constituted an attempt to obtain a monopoly in exhibition forbidden by the Sherman Act, a conclusion which requires the elimination of our Findings 152 and 153, as explained above.

In respect to monopoly power, we think it existed in this case. As we have shown, the defendants were all working together. There was a horizontal conspiracy as to price-fixing, runs and clearances. The vertical integrations aided such a conspiracy at every point. In these circumstances, the defendants must be viewed collectively rather than independently as to the power which they exercised over the market by their theatre holdings. See American Tobacco Co. v. United States, 328 U. S. 781. The statement in our former opinion that the defendants were to be treated individually is subject to our comments in dealing with Findings 152, 153 and 154. We were then proposing to set up a bidding system which was thought adequately to restore competition and, therefore, to render a treatment of the defendants in the aggregate as irrelevant. We regard such treatment as now necessary.

[fol. 101] If viewed collectively, the major defendants owned in 1945 at least 70% of the first-run theatres in the 92 largest cities, and the Supreme Court has noted that they owned 60% of the first-run theatres in cities with populations between 25,000 and 100,000. As distributors, they received approximately 73% of the domestic film rental from the films, except Westerns, distributed in the 1943-44 season. These figures certainly indicate, when coupled with the strategic advantages of vertical integration, a power to exclude competition from these markets when desired. This power might be exercised either against non-affiliated exhibitors or distributors, for the ownership of what was generally the best first-run theatres, coupled with the possession by the defendants of the best pictures, enable them substantially to control the market. If an intent to exercise the power be thought important, it existed in this case, as we noted above in finding an attempt to monopolize. Our former Finding No. 119 was not made in consideration of first-run theatres

but was based on total theatre holdings in the country, of which the theatres owned by the defendants represented but a small fraction. We, therefore, did not take into consideration the monopoly power in respect to first-run theatres, which we have since been directed to consider. Accordingly, our Finding No. 119 is in view of our further consideration misleading and must be vacated.

We may add that what we have said about the power to exclude independents from first-runs in the 92 cities is supported by evidence of actual exclusion which is presented in the Government's original brief, pages 13-14 and 35-40. In many cities, there was complete exclusion of independents and in numerous others a restricted distribution [fol. 102] of pictures to independents, at times by only one of the defendants, and at other times by most limited percentages of pictures as compared with the number distributed to affiliated theatres. The facts as to film distribution in the 1943-44 season show that the five major defendants achieved a monopoly of first-run exhibition of the feature films distributed by the five major defendants in about 43 of the 92 cities of over 100,000 and of the feature films distributed by the eight defendants in about 143 of the 320 cities of 25,000 to 100,000. [See Government Exhibits 489, 490, 490(a).] In addition to the proof of monopoly control in cities of more than 25,000 the plaintiff has produced proof that in approximately 238 towns involving in all but about 17 cases populations of less than 25,000 but having two or more theatres, some single one of the five major defendants, or in about 18 cases two of the defendants, had all the theatres and therefore possessed a complete local monopoly in exhibition (See Government Exhibit 488). These figures are subject to some qualifications because of inaccuracy as to a few localities, but for the most part they appear to be correct and to show either total absence of competition or slight competition from drive-ins and theatres in nearby communities. They afford significant additional proof of monopoly control. Accordingly, there was not only the power to exclude which might be exercised at will but an actual exclusion approximating in the aggregate 70% of the first-run theatre market in the 92 largest cities. This percentage is based on the proportions of theatre ownership of the major defendants in

these cities as compared with independents. There is certainly no reason to suppose that at least as great [fol. 103] a percentage would not exist in favor of the major defendants in the number of feature films distributed on first-run.

Furthermore, the power to fix clearances and runs which we have found existed and was exercised by the major defendants was in itself a power to exclude independents who were competitors, and was accompanied by actual exclusion.

The Remedy

The Supreme Court has denied the remedy of requiring the defendants to offer films to the highest bidder and has required us to find some other means of obviating the illegal practices and attempted monopoly on the part of the defendants. The latter argue that the injunction issued in our prior decree, supplemented by a prohibition of discrimination against small independents and an adequate arbitration system, would afford a sufficient remedy. Mr. Justice Douglas has in this very case pointed out the inadequacies of an injunction to deal with situations much like the present. In discussing the objections to competitive bidding, he alluded to the fact that the determination of what was the best bid in a given case would depend on a comparison of the theatres and theatre operators desiring a picture, rentals offered, which might be a flat rental for one theatre and a percentage rental for another, and the relative value in respect to the various offers of the clearances and runs proposed. He said: "It would involve the judiciary in the administration of intricate and detailed rules governing priority, period of clearances, length of run, competitive areas, reasonable return, and the like." (United States v. Paramount Pictures, Inc., 334 U. S. 131, 163.) Practically all of the same objections would exist if an injunction should be relied on as the only remedy for the abuses which have been found to exist in [fol. 104] the case at bar. The effect of such a solution would be to leave the determination of difficult comparisons to the discretion of the very parties who have frequently abused that discretion in the past, or to a detailed supervision by the courts, the burden of which would only be ameliorated by a system of arbitration if and in so far

as particular independents having grievances might be willing to adopt it. If we had regarded an injunction as a sufficient remedy, we would not have required a competitive bidding for films in our original opinion.

In United States v. Crescent Amusement Co., 323 U. S. 173, 189-190, Mr. Justice Douglas, in discussing the inadequacy of injunctions and the propriety of divestiture to prevent violations of the Sherman Act, said:

> "The fact that the companies were affiliated induced joint action and agreement. Common control was one of the instruments in bringing about unity of purpose and unity of action and in making the conspiracy effective. If that affiliation continues, there will be tempting opportunity for these exhibitors to continue to act in combination against the independents. The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future. Hence we do not think the District Court abused its discretion in failing to limit the relief to an injunction against future violations. There is no reason why the protection of the public interest should depend solely on that somewhat cumbersome procedure when another effective one is available."

In the *Crescent* case, the court accordingly affirmed an order of divestiture of stock held by the defendant companies to terminate affiliations and prevent further violations of the Act.

[fol. 105] As an injunction is regarded as an insufficient remedy there must, in our opinion, be a divorcement or separation of the business of the defendants as exhibitors of films from their business as producers and distributors. Just as in the *Crescent* case affiliation was held to furnish the incentive for carrying out the conspiracy that there existed, we find that vertical integration has served a similar purpose in the case at bar.

It is argued that the monopoly power which we have found existed in 1945 as to first-run theatres in the 92 largest cities has ceased to exist and that monopolies in particular localities have been substantially lessened in

respect to Loew, Warner, and Fox, by the consent decrees recently entered against Paramount and RKO, by the dissolution of pools and joint interests which has taken place or will take place pursuant to our decree and by changes in distribution practices. Assuming that this is so, nevertheless, we have found that a conspiracy has been maintained through price-fixing, runs and clearances, induced by vertical integration, and that this conspiracy resulted in the exercise of monopoly power. The necessity of terminating such a conspiracy by the three defendants which have not subjected themselves to a consent decree would be unaffected by the present existence or non-existence of a monopoly on their part in first-runs, for the conspiracy is illegal even though the participants may have ceased at least for the time to possess monopoly power. Moreover, the monopoly power might be built up again if the illegal practices were not terminated by divorcement, irrespective of the fact that two of the conspirators have been eliminated from the conspiracy by the consent decrees. Therefore, the divorcement we have determined to order appears to be the only adequate means of terminating the conspiracy and preventing any resurgence of monopoly [fol. 106] power on the part of the remaining defendants. Beyond all the above considerations there would seem to be an inherent injustice in allowing defendants to avoid divorcement when they would have been originally subjected to it merely because two of their confederates eliminated themselves from a compulsory decree which would have been based upon the participation of all in the conspiracy.

The defendants further contend that they have changed their distribution practices by arranging for many runs and clearances which are more equitable than before, and that they no longer have any participation in fixing the prices to be charged by a theatre licensee, which are now wholly controlled by the licensees. But the temptation to continue such practices will still be strong, and we cannot regard an injunction as a sufficient preventive for the reasons already stated. Likewise, we cannot know whether the new distribution practices comply with the injunctive provisions of our former decree and do not feel justified in leaving defendants found to be participants heretofore

in improper practices free to continue them except for the inadequate injunctive provisions.

We have already held that our Findings 119, 152, 153 and 154 should be vacated. We also hold that Findings 155 and 156 should be vacated as they are incorrect or misleading in view of the elimination as a remedy of competitive bidding and our decision that injunctive relief alone is an insufficient remedy.

The plaintiff asks to have Finding 100 vacated and suggests a substitute. We hold that Finding 100 should be vacated because it is somewhat obscure in its scope and implications, but we do not find sufficient reason for adopting the proposed substitute, which seems to us to be irrelevant to the issues involved.

[fol. 107] Since the Supreme Court has eliminated any system of competitive bidding, our Findings 85 and 111 should likewise be vacated.

Joint Interests

The Supreme Court has asked us to reconsider the dissolution of joint interests between defendants and independents because some partial interests of independents were said to have been held by investors rather than actual or potential exhibitors. Paramount and RKO need not be considered, since they are now subject to the provisions of consent decrees. Fox has obtained an order, agreed to by the plaintiff, dealing with the disposition of all its joint interests, except its partial ownership through its affiliate National Theatres Corporation in Evergreen State Amusement Corporation. Fox contends that evidence offered at the trial after remand shows that one Newman, who had an indirect interest of about 15% in Evergreen, was not an actual or potential theatre operator. He became the president and manager of Evergreen, but that in itself did not make him a co-owner with Fox in that company, and his interest of about 15% seems to us no more than the interest of an investor. Nor do we find any indication that he would have been an independent operator of a theatre but for his investment in Evergreen. Prior to the investment he had been an employee of National and for some seven years had had no ownership in a theatre. In the circumstances, we hold that the interest of Fox in

Evergreen need not be dissolved, although it will be subject to a general divorcement like the other theatre holdings of Fox from its distribution business.

In respect to Warner, the plaintiff has consented to an order disposing of all its joint interests. In the case of Loew, the plaintiff has agreed to an order disposing of its joint interest in Buffalo Theatres, Inc., and seems to have [fol. 108] approved a stipulation made in open court providing for the disposition of all its other joint interests.

In our opinion the orders and stipulations relating to joint ownerships of Fox, Warner and Loew with independents are sufficient to dispose of all questions arising under the requirement of the Supreme Court that joint interests with actual or potential operators be dissolved. In view of the situation presented by the making of these orders and stipulations, our Findings 115, 116, and 117 should be vacated, and the proposed substituted findings of the plaintiff should be denied.

Franchises

We are directed by the Supreme Court to reconsider our prior decision prohibiting franchises in all cases, and as an initial step conforming to the Supreme Court's opinion our Finding 89 should be vacated. On reconsideration, we adhere to the view that the three remaining major defendants as well as the three minor defendants should not be allowed to grant franchises except to independents. Such a practice ties up the distribution of films and restricts competition by independents to obtain pictures for what we regard as unnecessarily long periods and has been a method of unlawful discrimination in the past. We hold, however, that any of the defendants may grant franchises to an independent operator, provided that the result thereof will be to enable such independent to compete effectively with theatres affiliated with a defendant or with theatres in the new theatre circuits to be formed pursuant to our order of divorcement. We see no objection to the substituted Finding 89 proposed by the plaintiff and adopt it accordingly.

Clearance

Our disposition of clearances was in no way altered by [fol. 109] the Supreme Court. We think, however, that

our Finding 77 was inadvertent and should be modified so as to read as follows, thus conforming to paragraph 4 in Section II of our decree based upon the finding:

> "A grant of clearance, when not accompanied by a fixing of minimum admission prices or not unduly extended as to area or duration affords a fair protection of the interest of the licensee in the run granted without unreasonably interfering with the interest of the public."

The substitute for Finding 78 proposed by the plaintiff is denied.

Discrimination

The plaintiff requests cancellation of paragraphs 8 and 9 in Section II of our former decree, which include provisions as to discrimination, and wishes to substitute a flat prohibition against including in licenses made with affiliatee exhibitors or circuits of theatres certain contract provisions by which discriminations against small independents and in favor of the large affiliated and unaffiliated circuits were accomplished, as this court stated in Finding 110, affirmed by the Supreme Court. These provisions would only be illegal if inherently discriminatory or used in a discriminatory manner. We think it sufficient to provide, as was done in the Paramount consent decree, that the distributor defendants be enjoined "from licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres, or others." It may be objected that this is competitive bidding which has been rejected by the Supreme Court, but it neither involves calling for bids nor licensing [fol. 110] picture by picture. A group of pictures may be licensed to one who wishes to take them without conditions being imposed that he can obtain one only if he purchases the group. We hold that the request of the plaintiff for the cancellation of paragraph 8 of Section II of the decree should be granted, but paragraph 9 should stand as it is. A new paragraph corresponding with the one we have quoted above from the Paramount consent decree should be substituted for the cancelled paragraph 8.

The Three Minor Defendants

We can see nothing in the arguments on behalf of these defendants for special treatment except an attempt to revise some of our former findings of fact and conclusions of law which have been affirmed by the Supreme Court. We have already dealt with the questions of franchises and discrimination earlier in this opinion. In respect to road shows, we see no reason for exempting them from the various injunctive provisions of our decree. It is entirely possible for the licensor to license for road shows, so long as it is not done in a discriminatory manner, either at a flat rental or on the basis of some percentage of what the show is thought likely to yield. But it would be unlawful in this, as in the case of other licenses, for the licensor to require a fixed admission price as a condition of the license.

The three minor defendants argue that they should be allowed to retain their old customers irrespective of discrimination and contend that the Supreme Court has indicated that they possess this right. We cannot so interpret the opinion of the Supreme Court. It only presented the argument that, if competitive bidding had been sanctioned, the three minor defendants would lose the relationships they had with old customers and would be at a disadvantage in competing with the more powerful major defendants [fol. 111] whose own theatres were not subject to competitive bidding. The system of preferring old customers undoubtedly aided discrimination in the past and served as a ready excuse for a fixed system of runs and clearances and was to that extent unlawful. When separation of the business of distribution from that of the operation of theatres is affected, there will be a favorable market for the three minor defendants in which to license their pictures. This will be not only a compensation for inability to prefer their old customers but apparently a substantial added advantage to them in obtaining a greater opportunity to license their pictures than they had heretofore.

The Decree

The Supreme Court has asked us to divest any theatres which may be fruits of past illegal restraints or conspiracies. It may appear also to be necessary, irrespective of

our general plan of divorcement, to terminate theatre monopolies in certain local situations possessed by any individual defendant or by any new theatre circuit which may be set up under the divorcement decree we propose. The plaintiff has presented insufficient evidence to justify us in disestablishing particular theatres either on the theory of local monopolies or of illegal fruits, and indeed it has formally stated that evidence of illegal fruits is not now available. So far as local monopolies are concerned, the statistics presented by the plaintiff were furnished to support the need for a general divorcement which this opinion has sanctioned and did not precisely reach any situations of local monopoly which may require divestiture of specific theatres. Moreover, certain of the statistics presented by the plaintiff go no farther than the year 1945, and there have been various changes in theatre holdings since that date. Accordingly, consideration of fruits and local monopolies will be suspended in the decree which we shall presently make.

[fol. 112] In accordance with the instructions of the Supreme Court it is necessary that the provisions of paragraph 6 in Section III of our former decree in respect to expansion of theatre holdings be vacated. A provision should be substituted in the decree to be entered which enjoins the three exhibitor-defendants and any theatre-holding corporation resulting from the divorcement we propose from acquiring a beneficial interest in any additional theatre unless the acquiring exhibitor-defendant or corporation shall show to the satisfaction of the court, and the court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures.

It is argued by the plaintiff that a limited prohibition of cross-licensing of pictures among the three major defendants should be adopted temporarily. We think such a limitation would be unwarrantedly injurious both to those defendants and to the public. The plaintiff proposes that each major defendant be enjoined from licensing more than half of its films to any of the other defendants pending the completion of divorcement plans in those towns where the plaintiff claims there are no independent theatres or at least no independent first-run theatres. The plaintiff evidently hopes that such a limitation would induce inde-

pendents to acquire theatres in so-called closed towns. Unless and until that should happen, one or two of the major defendants might be unable to show more than half of their pictures in such towns, and if but one of the major defendants had theatres there, those theatres could show only half of the films of the other two. It is manifest that this limitation upon cross-licensing would injure both the major defendants and the public, who would be deprived of [fol. 113] seeing some of the pictures. In addition to this, the selection of the particular pictures in the half which could be licensed would involve some difficulties and might prove in the end to have been unwise, both for the distributor involved and the public interest. Our remedy of divorcement will meet all of the purposes for which the plaintiff is striving. We do not think that its completion will be so delayed as to justify this doubtful and difficult ad interim remedy proposed by the plaintiff.

The arbitration system and the Appeal Board which has been a part of it have been useful in the past and as we understand it have met with the general approval of the plaintiff and of those defendants who have agreed to it. In our opinion it has saved much litigation in the courts and it should be continued. Accordingly, the three major distributor-defendants and any others who are willing to file with the American Arbitration Association their consent to abide by the rules of arbitration and to perform the awards of arbitrators, should be authorized to set up an arbitration system with an accompanying Appeal Board, which will become effective as soon as it may be organized after the decree to be entered in this action shall be made, upon terms to be settled by the court upon notice to the parties to this action.

The decree herein should be settled on notice and should be in accord with what we have said in the foregoing opinion. The terms as to divorcement set forth in the plaintiff's proposed decree seem to us satisfactory, except that the reference to paragraph 10 in Section III relating to joint interests, which we have rejected, should be deleted. We also approve of the further proposal of the plaintiff that the plaintiff and the defendants shall submit plans calling for such divestitute of theatres as may comply with [fol. 114] the requirements of the Supreme Court regarding local monopolies and illegal fruits. Any ultimate dis-

position, however, must await a later order which shall be dependent upon the proof the plaintiff may furnish as to local monopolies and illegal fruits. We may perhaps indulge in the hope that the parties may be able to agree as to the disposition of any such interests, as they have done in the case of joint ownerships.

We do not approve of the provisions limiting cross-licensing pending the completion of divorcement or the provisions relating to dissolution of joint interests with independents, which have been sufficiently provided for in stipulations of the three major defendants and the orders entered thereon to which we have made reference. Our opinion indicates other changes in the decree proposed by the plaintiff, which should be embodied in the amended decree.

We have specified former findings which should be vacated and in some instances have set forth proper substitutes. Further disposition of any findings to be made should await submission by the parties.

Submit proposed amended decree and findings on or before September 20, 1949.

Augustus N. Hand
U. S. C. J.
Henry W. Goddard
U. S. C. J.
Alfred C. Coxe
U. S. C. J.

Dated July 25, 1949.

(Here follows 2 Pasters, side folios 115, 116)

[115].

Appendix 1

Summary of Theatre Holdings—Major Defendants

Towns Under 100,000—1945

	Paramount		Fox		Warner		Loew		RKO		Totals**	
	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres
One deft. owns all affiliated theatres in the town	438 88%	1084 87%	163 92%	398 93%	133 86%	263 86%	8 57%	10 59%	21 30%	34 23%	763 91.5%	1789 88%
The defts. in the town are pooled as to some or all of their theatres	43 9%	6 (115)* 10%	1 .5%	(1)*	5 3%	5 (8)* 4%	2 14%	1 (2)* 18%	39 60%	2 (108)* 73%	45 5.5%	14 (117)* 7%
There is competition between defts.	13 3%	31 3%	13 7.5%	29 7%	17 11%	30 10%	4 29%	4 23%	6 10%	6 4%	26 3.0%	100 5%
Totals	494 100%	1121 (115)* 100%	177 100%	427 (1)* 100%	155 100%	298 (8)* 100%	14 100%	15 (2)* 100%	66 100%	42 (108)* 100%	834 100%	1903 (117)* 100%

* These theatres were pooled by two defendants. Since each time a theatre was pooled there were two owners involved, the total number of pooled theatre interests was twice the number of theatres pooled. The term "pooled" is here used to include joint ownerships among defendants.

** The total number of towns is not necessarily the sum of the towns listed for each of the five defendants, since some towns have theatres owned by more than one individual defendant and such towns are therefore duplicated in the individual listings.

[116]

APPENDIX 2

Summary of Theatre Holdings—Major Defendants

Towns Over 100,000—1945

	Paramount		Fox		Warner		Loew's		RKO		Totals***	
	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres
One deft. owns all affiliated theatres in town	20 41%	138 39%	9 53%	70 33%	5 19%	17 7%	4 11%	12 8%	2 6%	19 7%	40 46%	256 23%
The defts. in the town are pooled as to some or all of their theatres	6 12%	15 (50)* 18%	....	....	5 19%	98 (27)* 51%	1 3%	.... (10)* 7%	5 16%	2 (35)* 15%	10 11.5%	115 (61)* 16%
Holdings of a deft. or pool which dominates affiliates in the town **	5 10%	53 (5)* 17%	3 18%	81 (6)* 41%	2 8%	8 (4)* 5%	....	....	2 6%	1 (9) 4%	10 11.5%	165 (22)* 17%
Holdings in towns dominated by another deft.**	4	3 (9)*	2	2 (1)*	1	4	9	8 (9)*	5	5 (1)*		
Holdings where competition exists	14 37%	71 (8)* 26%	3 29%	50 (1)* 26%	13 54%	80 (5)* 37%	23 86%	104 (1)* 85%	17 72%	177 (7)* 74%	27 31.0%	482 (11)* 44%
Totals	49 100%	280 (72)* 100%	17 100%	203 (8)* 100%	26 100%	207 (36)* 100%	37 100%	124 (20)* 100%	31 100%	204 (52)* 100%	87 100%	1018 (94)* 100%

* These theatres were pooled by two defendants. Since each time a theatre was pooled there were two owners involved, the total number of pooled theatre interests was twice the number of theatres pooled. The term "pooled" is here used to include joint ownerships among defendants.

** In arriving at an over-all total of theatres located in towns where one defendant dominated affiliated competition, the theatres of all defendants in such towns have been included because there exists no substantial competition among the defendants in any of them, but in considering records of individual defendants holdings in towns dominated by another defendant were treated as competitive. The ten towns designated as areas where one defendant or a pool dominates all other affiliates are:

Atlanta, Cleveland, Denver, Detroit, Des Moines, Houston, Los Angeles, Paterson, Rochester and San Francisco.

*** The total number of towns is not necessarily the sum of the towns listed for each of the five defendants, since some towns have theatres owned by more than one individual defendant and such towns are therefore duplicated in the individual listings.

UNITED STATES DISTRICT COURT

[Title omitted.]

[fol. 117] FINDINGS OF FACT *

This action having been duly tried and the proofs and arguments of the respective parties having been duly heard and considered, this court, having filed its opinions herein dated June 11, 1946, and July 25, 1949, does hereby find and decide as follows:

1. The following are definitions of terms used in these findings and in the judgment to be entered hereon:

Block-booking. The practice of licensing, or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license another feature or group of features released by the distributor during a given period.

Clearance. The period of time, usually stipulated in license contracts, which must elapse between runs of the same feature within a particular area or in specified theatres.

[fol. 118] *Exchange District.* An area in which an office is maintained by a distributor for the purpose of soliciting license agreements for the exhibition of its pictures in theatres situated throughout the territory served by the exchange and for the physical distribution of such films throughout this territory.

Feature. Any motion picture, regardless of topic, the length of the film of which is in excess of 4,000 feet.

Formula Deal. A licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross.

Franchise. A licensing agreement, or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of features released

* Unless otherwise stated these findings show the situation in 1945.

by one distributor during the entire period of the agreement.

Independent. A producer, distributor, or exhibitor, as the context requires, which is not a defendant in this action or a subsidiary or affiliate of a defendant.

Master Agreement. A licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres, usually comprising a circuit.

Motion Picture Season. A one-year period beginning about September 1 of each year.

Road-show. A public exhibition of a feature in a limited number of theatres, in advance of its general release, at admission prices higher than those customarily charged in first-run theatres in the areas where they are located.

Runs. The successive exhibitions of a feature in a given area, first-run being the first exhibition in that area, second-run being the next subsequent, and so on, and shall include also successive exhibitions in different theatres even though such theatres may be under a common ownership or management.

Trade-Showing. A private exhibition of a feature prior to its release for public exhibition.

2. Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1501 Broadway, New York, [fol. 119] New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

3. Paramount Film Distributing Corporation, a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1501 Broadway, New York, New York, and is engaged in the distribution branch of the industry.

4. In 1916 or 1917, a group of exhibitors which controlled many of the then best theatres throughout the country organized First National Exhibitors Circuit, Inc. Although this corporation was initially organized to function as a film buying combine, it evolved into a film-producing com-

pany first by financing the production of pictures by others for exhibition in the theatres of its members and finally by producing its own motion pictures.

5. The members of this First National group, consisting of many of the most important exhibitors in the United States controlling many of the best theatres, became franchise holders of the distributing company which they formed. They acquired not only the right to exhibit in their own theatres the pictures produced and distributed by First National, but also they each obtained the right to sub-franchise other exhibitors in their respective territories. In a short time there were some 3,500 franchise holders, representing as many or more theatres.

6. First National soon began to negotiate for the services of well-known stars and directors in the employ of other [fol. 120] producers, including Paramount, and the members of First National began to refuse to exhibit Paramount films. Such well-known stars as Mary Pickford and Norma Talmadge went over to the First National group.

7. Many of the theatres owned by members of First National had, for a long time prior to 1918, exhibited Paramount pictures. The formation and growth of First National gradually cut down the number of Paramount pictures exhibited in the theatres of the First National group. By 1919 Paramount faced a situation where a group of owners of many of the best theatres in the large cities, many of whom had been its customers in the past, had combined together for cooperative buying and had expanded into a strong organization which distributed its own pictures and threatened to supply its members with enough pictures to permit them to operate without using any pictures of other producers, including Paramount.

8. In these circumstances Paramount determined to acquire interests in theatres of its own so that it might assure itself of outlets for Paramount productions. Prior to the fall of 1917 Paramount had no theatre interests. Between 1917 and 1919 it acquired an interest in two theatres in New York City as show windows, to replace the Strand Theatre which had gone over to the First National Group. During that year in conjunction with its representative in the South, it formed Southern Enterprises, Inc., which acquired various theatres in the South. At about the same time Paramount acquired a 50% interest in the Black chain

of theatres in New England. Paramount continued to expand its theatre holdings.

[fol. 121] 9. In January 1932, Paramount went into equity receiverhip in the United States District Court for the Southern District of New York. It stayed in equity receivership until March 1933, when it went into voluntary bankruptcy. It remained in bankruptcy until June 1934, when upon passage of Section 77B of the Bankruptcy Law, it petitioned for reorganization. It was finally reorganized under its present name in June 1935. During these years various companies operating theatres in which Paramount was interested were themselves the subject of bankruptcy or receivership proceedings.

10. Some of the theatre interests which Paramount held at the time of the trial of this action had been acquired and were wholly owned by it either directly or indirectly through subsidiary companies prior to bankruptcy and reorganization. In the course of its reorganization, some of its partly owned theatre interests were created, i.e., in some instances the plan of reorganization approved by this court provided for the sale or other disposition by Paramount of a partial interest (sometimes amounting to 50%, sometimes more and sometimes less) in theretofore wholly owned theatre operating companies, or companies holding legal or equitable interests in theatres or theatre operating companies. The result was the creation of many of Paramount's present partly owned theatre interests.

11. In the course of the reorganization proceedings Paramount lost its interests in some theatres and also changed its relationship with respect to interests in some of its theatre operating companies. The effect of these proceedings and the policy of decentralization inaugurated in the course there, was that in some instances Paramount dis-[fol. 122] posed of a partial interest in companies theretofore wholly owned.

12. Loew's Incorporated is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1540 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

13. Radio-Keith-Orpheum Corporation is a corporation

organized and existing under the laws of the State of Delaware, with principal place of busines at 1270 Sixth Avenue, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

14. RKO Radio Pictures, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the production and distribution branch of the industry.

15. Keith-Albee-Orpheum Corporation was a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and was engaged in the business of exhibiting motion pictures prior to its dissolution on September 29, 1944. Approximately 99% of its common stock and 33% of its preferred stock were held by Radio-Keith-Orpheum Corporation.

[fol. 123] 16. RKO Proctor Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

17. RKO Midwest Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Ohio, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

18. RKO was organized in 1928 by Radio Corporation of America largely for the purpose of obtaining an effective means of developing the use of its motion picture sound recording and reproduction devices in the motion picture production and exhibition fields.

19. At the time of its organization, RKO secured production and distribution facilities by merger with a small company, FBO Productions, Inc., which had limited production facilities and a national distributing organization. RKO invested substantial sums to modernize these facilities.

20. The formation of RKO introduced a new and substantial competitive factor in the production and distribution of motion pictures.

21. During its initial organizational period, RKO acquired interests in a number of companies operating circuits of vaudeville theatres.

[fol. 124] 22. RKO went into receivership in 1933 and continued in receivership and reorganization until 1940. At the time of its receivership RKO operated considerably more theatres than its present total of 106. During the receivership it lost 57 theatres.

23. The organization of RKO did increase competition in each of the three branches of the industry.

24. Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 321 West 44th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

25. On April 4, 1923, the four Warner brothers, Harry M., Jack L., Albert, and Sam, transferred their business of production and distribution of motion pictures to a corporation known as Warner Bros. Pictures, Inc. (hereafter referred to as Warner).

26. Beginning in 1925, Warner began the work of developing sound pictures under license and agreements from Western Electric, culminating in the production of such sound pictures as "The Jazz Singer," starring Al Jolson, in October, 1927, and the first 100% talking picture, "The Lights of New York" in the summer of 1928.

27. The Stanley Company of America had in 1928 and for a year prior thereto about 250 theatres situated principally in and around Pennsylvania and New Jersey.

[fol. 125] 28. Negotiations were begun with the view of exchanging stock of Warner for the stock of Stanley Company of America. This transaction was consummated late in 1928.

29. With the acquisition of the stock of Stanley Company of America, Warner acquired 250 theatres which could be immediately equipped with sound installation.

30. In the year and nine months immediately following

the acquisition of the stock of Stanley Company of America Warner secured in a similar fashion several other circuits of theatres owning theatres in the same general locality and a smaller number of theatres scattered in various other parts of the country.

31. In 1931 Warner had an interest in 591 theatres, the largest number of theatres in which Warner has ever had an interest.

32. Today, the Warner companies have an interest in 547 theatres—a net reduction of 44 from its peak holdings of 591 in 1931.

33. First National Pictures, Inc., a corporation engaged in the production and distribution of silent motion pictures, had been organized as far back as 1917 by approximately 24 exhibitors on a cooperative basis for the basis of acquiring film of first quality for exhibition in their own theatres, as well as for distribution by them for other theatres in the respective territories in which they operated.

34. In 1928 Stanley Company of America owned ⅓ of the stock of First National Pictures, Inc., all the stock of First National Pictures, Inc., being subject to a voting trust.

[fol. 126] 35. Warner acquired as part of the Stanley Company of America transaction in 1928, ⅓ of the stock of First National Pictures, Inc.

36. At or about the time of the acquisition of the Stanley Company of America stock, or shortly thereafter, Warner purchased another ⅓ of the stock of First National Pictures, Inc., from other First National Pictures, Inc. stockholders.

37. Subsequently, in 1929, Warner acquired the remaining ⅓ of the stock of First National Pictures, Inc., from defendant Twentieth Century-Fox.

38. Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged in the business of distributing motion pictures. On July 20, 1944, its name was changed to Warner Bros. Pictures Distributing Corporation.

39. Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is

a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and, among other things, acts as booking agent for the exhibition interests of the said Warner Bros. Pictures, Inc.

40. Twentieth Century-Fox Film Corporation is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 444 West 56th Street, New York, New York, and is engaged in [fol. 127] the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

41. Twentieth Century-Fox produces its features in its own studio in Los Angeles, California, distributes them in this country through thirty-one branches or exchanges which it operates in the principal centers of population, and licenses its features for exhibition in its own and other theatres.

42. Twentieth Century-Fox acquired its initial interest in theatres through the purchase of stock in corporations then engaged in operating theatres. Since such original acquisition, it has acquired additional interests in theatres, some of which were acquired in competition with other defendants and with independent circuits and some of which are new theatres constructed by it.

43. National Theatres Corporation is owned and controlled by Twentieth Century-Fox Film Corporation, and is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2854 Hudson Boulevard, Jersey City, New Jersey, and is a holding company for the theatre interests of the said Twentieth Century-Fox Film Corporation.

43(a) The theatre holdings of the major defendants have played a vital part in effecting violations of the Sherman Anti-trust Act.

[fol. 128] 43(b) Each of the defendants, Fox, Loew, Paramount, RKO and Warner has since 1940 increased its interest in theatres in which it had had an interest. Fox, Paramount and Warner, and RKO to a lesser extent, have acquired an interest since 1940 in a number of theatres in which they had had no interest prior thereto. The fore-

going acquisitions were permitted under the consent decree of November, 1940.

44. Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

45. Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of California, with a place of business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the business of producing motion pictures.

46. Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of Louisiana, with a place of business at 150 South Liberty Street, New Orleans, Louisiana, and is engaged in the business of distributing motion pictures.

47. Universal Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1250 Sixth Avenue, New York, [fol. 129] New York, and is engaged in the business of producing and distributing ~~motion pictures~~, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries. On May 25, 1943, its name was changed to Universal Pictures Company, Inc., when a subsidiary of the same name was merged into it, but Universal Corporation was the surviving corporation.

48. The corporation named in the complaint as Universal Pictures Company, Inc. was a subsidiary corporation, controlled by Universal Corporation, which was engaged in the business of producing motion pictures, prior to its merger into Universal Corporation on May 25, 1943.

49. Universal Film Exchanges, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York,

New York, and is engaged in the business of distributing motion pictures.

50. The Universal group of defendants at the time of the trial consisted of the following corporations: (1) Universal Pictures Company, Inc., (hereinafter sometimes called Universal Pictures), a Delaware corporation with its principal office in New York, N. Y., engaged in the business of producing motion pictures and distributing the same through wholly-owned subsidiaries; (2) Universal Film Exchanges, Inc. (hereinafter sometimes called Universal Film Exchanges), a Delaware corporation, with its principal office in New York, N. Y., engaged in the business of distributing motion pictures throughout the United States (except for the Metropolitan District of New York City), [fol. 130] a wholly-owned subsidiary of Universal Pictures; (3) Big U Film Exchange, Inc. (hereinafter sometimes called Big U), a New York corporation, with its principal office in New York, N. Y., engaged in the business of distributing motion pictures throughout the Metropolitan District of New York City, a wholly-owned subsidiary of Universal Pictures. The term "Universal" as used herein means any or all of the Universal defendants.

51. Prior to May 25, 1943, the name of Universal Pictures Company, Inc., was Universal Corporation, incorporated in Delaware in 1936. It owned approximately 92% of the outstanding common stock of a Delaware corporation which was incorporated in the year 1925 and was also known as Universal Pictures Company, Inc. Said corporation last-named had it principal office in New York, N. Y., and was engaged in the business of producing motion pictures and distributing the same through its subsidiaries. It owned all of the outstanding stock of Universal Film Exchange, Inc., and 20% of the outstanding common stock of Big U Film Exchange, Inc. The other 80% of said stock was owned by Universal Corporation. On May 25, 1943, Universal Pictures Company, Inc., (Delaware 1925) was merged into Universal Corporation (the surviving corporation), and the name of the surviving corporation was changed to Universal Pictures Company, Inc.

52. Big U Film Exchange, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1250 Sixth Avenue, New York, New

York, and is engaged in the business of distributing motion pictures.

[fol. 131] 53. United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries.

54. During the entire period in question United Artists Corporation distributed photoplays in the United States of America that were produced by David O. Selznick, Mary Pickford, Charles Chaplin, Hunt Stromberg, William Cagney, Bing Crosby, Edward Small, Sol Lesser, Lester Cowan, Jack Skirball, Benedict Bogeaus, Seymour Nebenzal, Jules Levey, David Loew, Arnold Pressburger, Charles R. Rogers, Andrew Stone, Constance Bennett, Howard Hughes, Preston Sturgis, J. Arthur Rank, Edward Golden, or corporations with which the aforesaid individuals were associated and other independent producers.

55. United Artists Corporation maintains 26 branches or exchanges located throughout the United States, and through these facilities it distributes and has distributed all of the product handled by it during the period in question.

56. Paramount Pictures, Inc.; Loew's Incorporated; Radio-Keith-Orpheum Corporation; Warner Bros. Pictures, Inc.; and Twentieth Century-Fox Film Corporation and their respective distribution and exhibition subsidiaries are the five major defendants. Columbia Pictures Corporation, Universal Pictures Company, Inc. and United Artists Corporation and their respective distribution subsidiaries are the three minor defendants.

[fol. 132] 57. As between the eight defendants, Paramount, Loew's, Fox, Warner, Columbia, United Artists, and Universal, there are no officers or directors in common, and none of said defendants owns any controlling stock or other securities in any other of said defendants.

58. Neither of the defendants Columbia, Universal and United Artists owns any theatres.

59. There exists active competition among the defendants and others in the production of motion pictures.

60. None of the defendants has monopolized or attempted to monopolize or contracted or combined or conspired to

monopolize or to restrain trade or commerce in any part of the business of producing motion pictures.

61. In the distribution of feature motion pictures no film is sold to the exhibitor; the right to exhibit under copyright is licensed.

62. In licensing features, each of the distributor-defendants has agreed with each of its respective licensees that the licensee should charge no less than a stated admission price during the exhibition of the feature licensed.

63. The minimum admission prices included in licenses of each of the eight distributor-defendants for any given theatre are in general uniform, being the usual admission prices currently charged by the exhibitor.

64. The defendant's licenses are in effect price-fixing arrangments among all of the distributor-defendants, as well as between such defendants individually and their various exhibitors. Thus there was a general arrangement of [fol. 133] fixing prices in which both the distributors and exhibitors were involved. The licenses required existing admission price schedules to be maintained under severe penalties for infraction. In the case of such exceptional features as "Gone With The Wind", "For Whom The Bell Tolls", "Wilson", and "Song of Bernadette", licensed for exhibition prior to general release and as to which the distributors were not satisfied with current prices, they would refuse to grant licenses unless the prices were raised.

65. The defendants granting film licenses have agreed with their licensees to a system which determines minimum admission prices in all theatres where feature motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged for most of the feature motion pictures exhibited either by the defendants or by independents within the United States.

66. All of the five major defendants have a definite interest in keeping up prices in any given territory in which they own theatres and this interest they were safeguarding by fixing minimum prices in their licenses when distributing films to exhibitors in those areas. Even if the licenses were at flat rate, a failure to require their licensees to maintain fixed prices would leave them free for lowering the current charge to decrease through competition the income to the licensor on theatres in the neighborhood. The whole system presupposed a fixing of prices by all parties concerned

in all competitive areas. There exists great similarity, and in many cases identity, in the minimum prices fixed for the same theatres in the licenses of all of the defendants.

[fol. 134] 67. The major defendants made operating agreements as exhibitors with each other and with independent exhibitors in which joint operation of certain theatres covered by the agreements is provided and minimum admission prices to be charged are either stated therein or are to be jointly determined by other means. These agreements show the express intent of the major defendants to maintain prices at artificial levels.

68. Certain master agreements and franchises between various of the defendants in their capacities as distributors and various of the defendants in their capacities as exhibitors stipulate minimum admission prices often for dozens of theatres owned by an exhibitor-defendant in a particular area in the United States.

69. Licenses granted by one defendant to another disclose the same interrelationship among the defendants. Each of the five major defendants as an exhibitor has been licensed by the other seven defendants as distributors to exhibit the pictures of the latter at specified minimum admission prices. RKO, Loew's, Warner, Paramount, and Fox, in granting and accepting licenses with minimum admission prices specified, have among themselves engaged in a national system to fix prices, and Columbia, Universal, and United Artists, in requiring the maintenance of minimum admission prices in their licenses granted to these exhibitor-defendants, have participated in that system.

70. The distributor-defendants have acquiesced in the establishment of a price-fixing system and have conspired with one another to maintain prices.

[fol. 135] 71. In agreeing to maintain a stipulated minimum admission price, each exhibitor thereby consents to the minimum price level at which it will compete against other licensees of the same distributor whether they exhibit on the same run or not. The total effect is that through the separate contracts between the distributor and its licensees a price structure is erected which regulates the licensees' ability to compete against one another in admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having theatres suitable for exhibition of a distributor's

feature in the particular competitive area will also be restricted as to maintenance of minimum admission prices, and this acquiescence of the exhibitors in the distributor's control of price competition renders the whole a conspiracy between each distributor and its licensees. An effective system of price control in which the distributor and its licensees knowingly take part by entering into price-restricting contracts is thereby erected.

71(a). This system also restricted competition between the theatres of the major defendants in those areas where there were theatres of more than one defendant since the minimum price to be charged by any theatre licensee was fixed and the licensee was prevented from competing in the business of exhibition by lowering his price.

71(b). Complete freedom from price competition among theatre holders could only be obtained if prices were fixed by all distributors and such a result was substantially obtained. Consequently the system of theatre licensing had a vital and all-pervasive effect in restricting competition of theatre patronage.

[fol. 136] 72. The differentials in admission price set by a distributor in licensing a particular feature in theatres exhibiting on different runs in the same competitive area are calculated to encourage as many patrons as possible to see the picture in the prior-run theatres where they will pay higher prices than in the subsequent runs. The reason for this is that if 10,000 people of a city's population are *utimately* to see the feature—no matter on what run—the gross revenue to be realized from their patronage is increased relatively to the increase in numbers seeing it in the higher-priced prior-run theatres. In effect, the distributor, by the fixing of minimum admission prices, attempts to give the prior-run exhibitors as near a monopoly of the patronage as possible.

73. Among the provisions common to the licensing contracts of all the distributor-defendants are those by which the licensor agrees not to exhibit or grant a license to exhibit a certain feature motion picture before a specified number of days after the last date of the exhibition therein licensed. This so-called period of "clearance" or "protection" is stated in the various licenses in differing ways; in terms of a given period between designated runs; in terms of admission prices charged by competing theatres;

in terms of a given period of clearance over specifically named theatres; in terms of so many days' clearance over specified areas or towns; in terms of clearances as fixed by other distributors; or in terms of combinations of these formulae.

74. The cost of each black and white print is from $150 to $300, and of a technicolor print is from $600 to $800. Many of the bookings are for less than the cost of the print so that exhibitions would be confined to the larger high-priced theatres unless a system of successive runs with [fol. 137] a reasonable protection for the earlier runs is adopted in the way of clearance.

75. Without regard to period of clearance, licensing features for exhibition on different successive dates is essential in the distribution of feature motion pictures.

76. Either a license for succesive dates, or one providing for clearance, permits the public to see the picture in a later exhibiting theatre at lower than prior rates.

77. A grant of clearance, when not accompanied by a fixing of minimum admission prices or not unduly extended as to area or duration affords a fair protection of the interest of the licensee in the run granted without unreasonably interfering with the interest of the public.

78. Clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures. The practice is of proved utility in the motion picture industry and necessary for the reasonable conduct of the business.

79. The major defendants have acquiesced in and forwarded a uniform system of clearances and in numerous instances have maintained unreasonable clearances to the prejudice of independents.

80. Some licenses granted clearance to all theatres which the exhibitor party to the contract might thereafter own, lease, control, manage, or operate against all theatres in the immediate vicinity of the exhibitor's theatre thereafter erected or opened. The purpose of this type of clearance agreements was to fix the run and clearance status of any [fol. 138] theatre thereafter opened not on the basis of its appointments, size, location, and other competitive features normally entering into such determination, but rather upon the sole basis of whether it were operated by the exhibitor party to the agreement.

81. The distributor-defendants have acted in concert in the formation of a uniform system of clearance for the theatres to which they license their films and the exhibitor-defendants have assisted in creating and have acquiesced in this system.

82. The defendants have acted in concert in their grant of run and clearance.

83. Clearances are given to protect a particular run against a subsequent run and the practice of clearance is so closely allied with that of run as to make findings on the one applicable to the other.

84. Both independent distributors and exhibitors, when attempting to bargain with the defendants, have been met by a fixed scale of clearance, runs, and admission prices to which they have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition either with defendants' theatre or theatres to which the latter had licensed their pictures.

85. The fixed system of runs and clearances which involved a cooperative arrangement among the defendants, was also designed to protect their theatre holdings, safeguard the revenue therefrom, and eliminate competition. The major defendants' predominant position in first-run theatre holdings was strongly protected by a fixed system [fol. 139] of clearances and runs. The power to fix clearances and runs which existed and was exercised by the major defendants was in itself a power to exclude independents who were competitors, and was accompanied by actual exclusion.

85(a). This system gave the defendants a practical control over the run and clearance status of any given theatre. It involved discrimination against persons applying for licenses and seeking runs and clearances for their theatres, because they had no reasonable chance to improve their status by building or improving theatres while the major defendants possessed superior advantages. Therefore, though the evidence was insufficient to prove that there was discrimination in negotiation for clearances and runs theatre by theatre, because it was well-nigh impossible to establish that a particular clearance or run was not refused because of the inadequacy of the applicant's theatre, the system of clearances and runs was such as to make com-

petition against the defendants practically impossible, and there was discrimination in particular instances.

86. Formula deals have been entered into by Paramount and by RKO with independent and affiliated circuits. The circuit may allocate playing time and film rentals among the various theatres as it sees fit. Arrangements whereby all the theatres of a circuit are included in a single agreement, and no opportunity is afforded for other theatre owners to bid for the feature in their several areas, seriously and unreasonably restrain competition.

87. Loew's is not, and never has been, a party either as a distributor or as an exhibitor, to any "formula deal" license agreements.

[fol. 140] 88. Master agreements which cover exhibition in two or more theatres in a particular circuit and allow the exhibitor to allocate the film rental paid among the theatres as it sees fit and also to exhibit the features upon such playing time as it deems best and leaves other terms to the circuit's discretion, have been entered into by the distributor-defendants and unreasonably restrain trade.

89. Franchises have been entered into by the distributor-defendants with affiliated and non-affiliated circuits which unreasonably restricted the opportunities of small exhibitors to license films in competition with the theatres of such circuits by tying up the films released for long periods of time. None of the major defendants has entered into any franchises since November, 1940 and they have none in existence in 1950.

90. Loew's today has outstanding no franchise agreements for any theatre in which it does not have an interest, and Loew's is not currently granting franchises. During its entire history Loew's, as a distributor, granted a total of 213 franchises, of which 154 were to independent theatres and only 59 to those in which any other producer-exhibitor had an interest.

91. Twentieth Century-Fox has not granted any franchises since June 6, 1940. In 1938-39, the motion picture season in which Twentieth Century-Fox had the greatest number of franchises outstanding, there were 400. Of these, 361 were with independent exhibitors.

92. During the period in question Universal entered into franchise agreements with 727 independent exhibitors and 43 affiliated exhibitors.

[fol. 141] 93. Block-booking, when the license of any feature is conditioned upon taking of other features, is a system which prevents competitors from bidding for single features on their individual merits.

94. For many years the distributor-defendants, except United Artists Corporation, licensed their films in "blocks" or indivisible groups, before they had been actually produced. In such cases the only knowledge prospective exhibitors had of the films which they had contracted for was from a description of each picture by title, plot, and players. In many cases licenses for all the films had to be accepted in order to obtain any, though sometimes the exhibitor was given a right of subsequent cancellation for a certain number of pictures. Because of complaints of block booking and blind-selling based upon the supposed unfairness of contracts which often includes pictures the inferior quality of which could not be known, Sections III and IV of the consent decree required the five consenting distributors to trade-show their films before offering them for license and limited the number which might be included in any contract to five. More than one block of five, however, could be licensed where the contents of any had been trade-shown. While this restriction in the consent decree has now ceased by time limitation, the consenting distributors have continued to observe the restriction. The non-assenting distributors have retained up to the present time their previous methods of licensing in blocks, but have allowed their customers considerable freedom to cancel the license as to a percentage of the picture contracted for.

95. United Artists did not at any time license the exhibition of its pictures in blocks but on the contrary licensed the exhibition of its pictures separately and individually.

[fol. 142] 96. During the period in question United Artists did not condition the licensing of any photoplay in any exhibitor's theatre upon that exhibitor's agreement to license other United photoplays for exhibition in said theatre.

97. Blind-selling is a practice whereby a distributor licenses a feature before the exhibitor is afforded an opportunity to view it.

98. Since the consent decree of November 20, 1940, the five major defendants have given each exhibitor, whether a defendant or independent, an opportunity at trade shows to view each feature before licensing it. In general, trade

shows, which are designed to prevent blind-selling, are poorly attended by exhibitors.

99. During the 1943-44 season, the number of features distributed by eight distributor defendants and the three other national distributors were as follows:

[fol. 143]

	Number of Films	Percentages of Total: With "Westerns" included	Percentages of Total: With "Westerns" excluded
Distributor-defendants:			
Fox	33	8.31	9.85
Loew's	33	8.31	9.85
Paramount	31	7.81	9.25
RKO	38	9.57	11.34
Warner	19	4.79	5.67
Columbia	41	10.32	12.24
United Artists	16	4.04	4.78
Universal	49	12.34	14.63
Sub-total	260		
Other National Distributors:			
Republic: 29 features, 30 "Westerns"		14.86	8.66
Monogram: 26 features, 16 "Westerns"		10.58	7.76
PRC: 20 features, 16 "Westerns"		9.07	5.97
		100	100
Sub-total, 137	397		
Total without "Westerns"	335		

[fol. 144] 100. The approximate total domestic film rental for the features listed in Finding 99 is as follows:

		Percent of Total
Fox	$50,300,000	18
Loew	54,700,000	20
Paramount	41,100,000	15
RKO	28,500,000	10
Warner	29,400,000	10
Columbia	19,600,000	7
United Artists	14,400,000	5
Universal	26,300,000	9
Republic	7,700,000	3
Monogram	4,500,000	2
PRC	1,900,000	1
Total	$278,400,000	100

101. Continuously since its organization RKO has distributed features for independent producers. The particular

independent producers whose features have been distributed by RKO have varied from time to time. In the nine seasons ending 1943-44, 19.8% of the features distributed by RKO were independently produced, and 28.4% of RKO's gross receipts from domestic licenses of features was derived from such independently produced features.

102. It would be financially impossible for RKO to operate its theatres on features distributed by RKO alone. [fol. 145] 103. Twentieth Century-Fox produced less than 9 per cent of the total number of features nationally distributed in the United States during each year between 1936-37 and 1944-45.

104. Universal has customarily produced at its studios at Universal City, California, during each theatrical year (commencing on or about September 1st) between 45 and 50 feature-length motion picture photoplays, seven so-called Westerns, four Serials, 15 two-reel subjects, 30 single-reel subjects, and 104 newsreels.

105. Said motion pictures were distributed by Universal and licensed for exhibition by motion picture theatres throughout the United States by means of a system of 31 exchanges located in various States in the United States, from the East Coast to the West Coast and from Canada to the Southern boundary. Universal also maintained a Home Office in the City of New York.

106. In marketing its motion pictures, Universal's usual and customary practice was to offer to license to exhibitors, by title and description as aforesaid, its entire line of pictures, consisting of feature-length motion picture photoplays, Westerns, short-subjects (consisting of serials and two-reel and one-reel pictures) and newsreels. In this way approximately 50 feature-length motion picture photoplays, a group of Westerns, short-subjects, two so-called "Special" photoplays, three features produced by independent producers, and newsreels, were offered to exhibitors by Universal each year.

106(a). During recent years, in excess of 600 feature-length motion picture photoplays were released each year in the United States, exclusive of foreign-made films. [fol. 146] Universal releases of feature-length photoplays, including Westerns and so-called Marquee pictures, during said period, equalled approximately 8% of the total number

of feature-length photoplays released in the United States each year.

107. During the period in question, United Artists Corporation distributed between 20 to 26 pictures a year when the corporation had a good year and has handled as low as 4 in distribution in a releasing season.

108. At no time during the period in question did United Artists distribute more than 5% of the feature photoplays American made and distributed in the United States of America and generally distributed less than 5% of such releases.

109. That in each distribution agreement with each producer using the facilities of United Artists for distribution among other things there appears substantially the following language:

> United agrees to devote its best efforts to the proper marketing and disposition of the motion pictures delivered hereunder in all the territories licensed hereunder wherein it customarily markets motion pictures, and to make such marketing as complete and efficient as practicable, so that the gross returns from the marketing of the product hereunder shall be as large as possible and at the same time consistent with the sound business policy of United.
>
> United will use its best efforts to procure prices, license fees and rentals in a fair and open market reasonably satisfactory to the Producer.
>
> Exhibition Contracts: The exhibition contracts for each of such motion pictures delivered hereunder shall be made separate and apart from the exhibition contract of any other motion picture marketed by United, with the exception that in territories other than the United States where it is customary to include more than one motion picture on a contract, the Production authorizes United to market its product in accordance with that custom. In no event, however, shall any [fol. 147] motion picture of the Producer be used to enforce the licensing, leasing or other disposition of any other motion picture marketed by United, and in such territory where it is the custom to include on one contract more than one motion picture United shall set

out the respective license fees for each motion picture after the name of such motion picture.

United agrees upon the written direction of Producer that United shall market wherever permissible the motion pictures designated by the Producer or its agent as a unit, and in such case such unit shall be licensed separate and apart from any other motion picture marketed by United, with the exception that in those countries where it is the custom to market all of the motion pictures on one contract, United shall adhere to the prevailing custom.

The Producer shall have the right to designate a representative for the territories hereinafter specified. The Producer shall bear all the expenses of such representative. Such representative must have an office in the central location of such territory, and if so United shall submit to such representative for his approval or rejection all proposed written contracts with exhibitors for that territory. The territories and their central location are as follows:

Territory	Central Location
United States and Canada	New York
British Isles	London
Australia	Sydney

Producer agrees that such submission shall not be necessary if made impractical by conditions beyond the control of United, such as conditions arising out of war.

If the Producer has designated such a representative for any such territory, United shall submit for his approval or rejection each proposed written contract for the distributing, exhibiting, or marketing of such Producer's motion pictures or any of them in the territory in which such representative is acting. No such contract shall be accepted by United if within three (3) succeeding business days following the date on which said proposed written contract has been received by the Producer or its representative the Producer or its representative shall return such proposed contract to United with its rejection noted thereon or appended thereto.

Should the Producer or its representative reject any such proposed contract the Producer or its representative shall have fourteen (14) days from the date of rejection in which to obtain a more favorable contract. Should the Producer or its representative fail so to do [fol. 148] the original contract shall ipso facto be deemed approved unless the Producer or its representative shall have designated its original rejection as final. No proposed contract on which the rejection has been designated as final shall be entered into by United.

Should the Producer or its representative at any time agree in advance with United upon the rental terms or license fees for the distribution, exhibition, or marketing of any motion picture in any specified theatre or situation, United shall not be obligated to submit the contract containing the terms so agreed upon to the Producer or its representative for approval.

[fol. 149] 110. Various contract provisions by which discriminations against small independent exhibitors and in favor of the large affiliated and unaffiliated circuits were accomplished are: suspending the terms of a given contract, if a circuit theatre remains closed for more than eight weeks, and reinstating it without liability upon reopening; allowing large privileges in the selection and elimination of films; allowing deductions in film rentals if double bills are played; granting move overs and extended runs; granting road-show privileges; allowing overage and underage; granting unlimited playing time; excluding foreign pictures and those of independent producers; granting rights to question the classification of feature for rental purposes. These provisions are found most frequently in franchises and master agreements, which are made with the larger circuits of affiliated and unaffiliated theatres. Small independents are usually licensed, however, upon the standard forms of contract, which do not include them. The competitive advantages of these provisions are so great that their inclusion in contract with the larger circuits constitutes an unreasonable discrimination against small competitors.

111. The discriminations referred to in Finding 110 can be enjoined but there is no effective way of preventing similar results from the use of other discriminatory devices in the absence of divorcement relief.

112. Agreements were made by the exhibitor-defendants with each other and their affiliates by which given theatres of two or more exhibitors, normally in competition with each other, were operated as a unit, or most of their business policies collectively determined by a joint committee or by one of the exhibitors, and by which profits of the "pooled" theatres were divided among the exhibitors in [fol. 150] or owners of such theatres according to pre-agreed percentages or otherwise. Some of the agreements provide that the ~~parties~~ thereto may not acquire other theatres in the competitive vicinity without first offering them for inclusion in the "pool". The result is to eliminate competition pro tanto both in exhibition and in distribution of features which would flow almost automatically to the theatres in the earnings of which they have a joint interest.

113. Other forms of operating agreements are between major defendants and independent exhibitors rather than between major defendants. The effect is to ally two or more theatres of different ownership into a coalition for the nullification of competition between them and for their more effective competition against theatres not members of the "pool".

114. In certain other cases the operating agreements are accomplished by leases of theatres, the rentals being determined by a stipulated percentage of profits earned by the "pooled" theatres. This is but another means of carrying out the restraints found above.

115. Many theatres, or the corporations owning them, have been held jointly by one or more of the exhibitor-defendants together with another exhibitor-defendant. These joint interests have enabled the major defendants to operate theatres collectively rather than competitively. When one of the major defendants has owned an interest of five per cent or less, such an interest was *de minimis* and was only to be treated as an inconsequential investment in exhibition. A summary of theatres jointly owned by two

defendants is set forth in the following tabulation taken [fol. 151] from RKO's Exhibit 11:

Paramount-Fox	6
Paramount-Loew's	14
Paramount-Warner	25
Paramount-RKO	150
Loew's-RKO	3
Loew's-Warner	5
Fox-RKO	1
Warner-RKO	10
Total	214 Theatres

The major defendants have, since the remand of this case, entered into orders and stipulations providing for the dissolution of all such joint interests still held by them, except those which were *de minimis.*

116. The interest of Newman in Evergreen State Amusement Corporation was that of an investor.

117. Many theatres, or the corporations owning them, have been held jointly by one or more of the exhibitor defendants with independents. A summary of such theatres is set forth in the following tabulation taken from RKO's Exhibit 11:

Paramount	993
Warner	20
Fox	66
RKO	187
Loew's	21
Total	1,287

Some involved no more than innocent investments by those who were not actual or potential theatre operators. Others involved an alliance with one who was or would have been an operator but for the joint ownership, thereby eliminating [fol. 152] putative competition. When a defendant or an independent has owned an interest of five per cent or less, such an interest was *de minimis* and was only to be treated as an inconsequential investment in exhibition. Of the theatres listed above, 177 theatres in which Paramount had an interest and 32 in which RKO had one were *de*

minimis. The dissolution of all joint interests with a present or potential operator has been provided for in orders and stipulations entered into by the major defendants since the remand of this case.

118. In the year 1945 there were about 18,076 motion picture theatres in the United States, of which the five major defendants had interests in 3,137, or 17.35 percent. Of the latter, Paramount or its subsidiaries owned independently ~~of the other~~ defendants, 1,395—a little less than half, or about 7.72 per cent; Warner 501, or about 2.77 per cent; Loew's 135, or about .74 percent; Fox 636, or about 3.52 percent; and RKO 109, or about .60 percent. There were 361 theatres, or about 2.00 percent, in which two or more of these defendants had joint interests, whether held directly or indirectly through stock ownership in the same corporation or through a lease or operating agreement. This tabulation excludes theatres connected with one or more of the defendants through film-buying or management contracts or through corporations in which a defendant owned an indirect minority stock interest. It includes all theatres in which each defendant otherwise owned a direct or indirect interest of any amount.

119. Former Finding 119 has been vacated.

120. On January 1, 1935, Loew's operated in the United States 126 theatres. The first-run theatres, which are engaged to a large extent in exhibiting Loew's own product, Metro pictures, serve as "show cases" for those pictures [fol. 153] in the areas where the theatres are located.

121. The formation of RKO resulted in the conversion of vaudeville theatres required by it into motion picture theatres and thereby introduced new and substantial competition into the exhibition field in the cities in which each of these theatres was located, except insofar as such competition was affected by the practices of the defendants.

122. Ownership and operation by RKO of theatres in certain principal cities of the United States enables RKO through the utilization of the facilities of such theatres to plan and direct the first exploitation of the features which it distributes in such areas in a more effective manner than is possible in areas where RKO does not operate theatres.

123. The successful exhibition of a feature in its initial runs in any area is widely publicized and closely observed by subsequent run exhibitors in that area and success in

exploiting a picture in such exhibitions produces increased revenue both for the distributor and for subsequent run exhibitors.

124. Each of the five major defendants is able to coordinate the initial exhibition of its features in its theatres with an extensive and accurately timed national advertising campaign.

125. Twentieth Century-Fox is interested in theatres in only 16 of the 92 cities having a population of over 100,000. In 12 of these 16 cities features of one or more defendants are licensed to independent first run exhibitors competing with Twentieth Century-Fox [New York, Seattle, Denver, [fol. 154] Portland, Oakland, San Diego, Long Beach, Los Angeles, San Francisco, Spokane, Sacramento, and Kansas City, Kansas] as well as to other defendants having theatres in some of these cities. In three of the remaining four cities, features of one or more defendants are licensed on first run to other defendants.

126. The 17.35% of theatres which comprise the five circuits of the major defendants pay from 35 to 54% of the total domestic film rental, respectively, received by the eight distributor defendants and 45% of the total domestic film rental received by all of said distributor-defendants. The five largest unaffiliated circuits together pay less than 5% of such rental.

127. The major defendants, as distributors, during the 1943-44 season, received from 71 to 81% of the film rental that was paid to all distributors by exhibitors affiliated with the five major defendants. The minor defendants received from 26 to 15% of such rental and the independent distributors from 2½ to 4½% of such rental.

128. During the 1943-44 season the eight distributor defendants received 45.2% of the total feature film rental received by them from theatres affiliated with the five major defendants; and 54.8% of such rental from other exhibitors.

129. In some situations where Paramount had theatre interests, other defendant distributors licensed their features to competing theatres and not to the Paramount theatres, and in some cases the operating companies in which Paramount was interested were not able to obtain the right to exhibit the feature of some of the other defend- [fol. 155] ant distributors.

130. Paramount features are licensed for exhibition in

from 8,000 to 14,500 theatres in the United States annually. The number of licenses each year varies from feature to feature and from year to year.

131. In 21 of the 36 out of the 92 cities where Loew's operates theatres none of the other four producer-exhibitors licensed its features in the 1943-44 season for first-run exhibition in a Loew's theatre, to the extent of more than three features, the Loew's theatres' first-run exhibition being otherwise limited to its own features and those of non-theatre-owning producers.

132. Over the 10 years from 1935 to 1945, the total number of features licensed by the other four theatre-owning distributors to Loew's first-run houses, decreased from 1,382 to 998 and the features of non-theatre-owning distributors increased from 1,201 to 1,879.

133. In 1935, the other four theatre-owning distributors earned $2,611,986 from Loew's theatres and the non-theatre-owning distributors earned $2,205,330 ($406,656 less). In 1944, the non-theatre-owning distributors earned $5,261,116 in Loew's theatres, which was $419,477 more than the $4,-841,639, earned in Loew's theatres in that year by the four other theatre-owning distributors.

134. In 1944, the percentage of the total film rental paid by Loew's theatres to each of the non-theatre-owning distributors, Columbia (8.8%), United Artists (8.3%) and Universal (7.4%), was higher than that paid to each of three [fol. 156] producer-exhibitors, RKO [2.1%], Warner Bros. [2.1%] and Twentieth Century-Fox [6.1%].

135. In the year 1944, of the total film rental paid by Loew's theatres, 47.9% was to Loew's itself for the exhibition of Loew's pictures, and 27.1% was to non-theatre-owning distributors. Thus a total of 75% of all film rentals paid by Loew's theatres went to persons other than the four other defendant-producer-exhibitors.

136. During the 1943-44 season RKO received 56.9% of its total license fees from independent theatres, 14.1% from its own theatres, and [in the aggregate] 29% from theatres affiliated with other defendants.

137. In the 1943-44 season, of the total number of exhibitions of features in first-run and metropolitan second-run theatres operated by RKO, 23.1% were exhibitions of features distributed by RKO, 29.6% were exhibitions of features distributed by other theatre-owning distributors, and

47.3% were exhibitors of features distributed by non-theatre-owning distributors. In the same season the respective percentages of the feature film rentals paid by RKO were 30.6 to RKO, 43.7 to other theatre-owning defendants, and 23.7 to non-theatre-owning distributors.

138. In the 4 pre-war seasons of 1937-1940, Warner derived about 61-6/10% of its domestic gross rentals from theatres not affiliated with any of the defendants, about 14% from theatres in which it had an interest, about 13% from theatres in which Paramount had an interest, about 4% from theatres in which Twentieth Century-Fox had an [fol. 157] interest, about 6% from theatres in which RKO had an interest, and less than 1% from theatres in which Loew had an interest.

139. Of its total domestic and foreign rentals Warner received about 30% from abroad, about 43% from theatres in which none of the defendants had an interest, about 10% from Warner's own American theatres, and the balance, about 16% from American theatres in which one or more of the defendants had an interest.

140. Not a single one of the Loew first run theatres in the 39 of the 92 largest cities where Loew operates or has an interest in first run theatres licensed a Warner feature for exhibition in the 1943-44 season. In the same season the Warner theatres regularly exhibited the Loew features in many of the 28 of the 92 largest cities where Warner operated or had an interest in first run theatres.

141. The dollars paid by Warner to each of the other defendants and by each of the other defendants to Warner show no uniformity of pattern from company to company from year to year.

142. There were marked variances from year to year in the sums paid as rental by the theatres in which Warner had an interest to United Artists, Universal, and Columbia, the non-theatre owning defendants.

143. Between 1937 and 1944 the theatres in which Warner had an interest substantially decreased the amount of film rental paid to the 5 theatre owning defendants, and substantially increased film rental paid to the non-theatre owning defendants.

[fol. 158] 143(a). During the 9 prewar years of 1933-1941, the average cost of American made Warner features rose

from $241,000 in 1933 to $448,000 in 1940. By 1945 the average cost had risen to $1,371,000.

143(b). In the past the foreign business of Warner has been exceedingly profitable.

143(c). With the cessation of the war the foreign market for Warner pictures are being severely restricted.

144. Of the total film revenue received by Twentieth Century-Fox in 1944 from all theatres in the United States, 60.8 percent was paid by exhibitors not defendants in this action; 14.1 percent was paid by its own theatres; 1.26 percent by Loew theatres; 5.52 percent by RKO theatres; 13.46 percent by theatres in which Paramount had an interest; and 4.82 percent by Warner theatres.

145. On January 1, 1935, there were 13,386 theatres operating in the United States. In 1945, there were 18,076 theatres operating in the United States.

146. In about 60% of the 92 cities having populations over 100,000, there are independent first run theatres.

147. In about 91 percent of the 92 cities with over 100,000 population there are first run theatres of more than one defendant or of a defendant and independents.

147(a). All the defendants entered into a horizontal conspiracy to fix prices, runs and clearances which was powerfully aided by the system of vertical integration of each of the five major defendants. Such a situation has made [fol. 159] the vertical integration an active aid to the conspiracy. Vertical integration has furnished an incentive for such conspiracy.

147(b). There is close relationship between the vertical integrations and the illegal practices. The vertical integrations were a means of carrying out the restraints and conspiracies.

147(c). The interdependency of defendants to obtain pictures for their theatres, on the one hand, and on the other, to obtain theatre outlets for their pictures has lessened competition among defendants and between them and independents.

147(d). There is substantial proof that monopoly power existed among the eight distributor-defendants who were all working together. Considering that the vertical integrations aided the horizontal conspiracy mentioned in Finding 147(a) at every point, the defendants must be viewed collectively rather than independently as to the power which

they exercised over the market by major defendants' theatre holdings.

147(e). Viewed collectively the major defendants owned in 1945 at least 70 percent of the first run theatres in the 92 largest cities.

148. In the aforementioned 92 cities, at least 70% of all of the first run theatres are affiliated with one or more of the major defendants. In 4 of said cities there are no affiliated theatres. In 38 of said cities there are no independent first run theatres. In the remaining 50 cities the degree of first run competition varies from the most pre- [fol. 160] dominantly affiliated first run situations, such as Boston, Chicago, Los Angeles, Philadelphia, St. Paul, and Washington, D. C., in each of which the independent first run theatres played less than eleven of the defendants' features on first run during the 1943-44 season, to the most predominantly independent first run situations, such as Nashville, Louisville, Indianapolis, and St. Louis, where the affiliated first run theatres played at least 31 of the defendants' pictures on first run during that season. In none of the said 50 cities did less than three of the distributor-defendants license their product on first run to the affiliated. In 19 of said 50 cities less than three defendant-distributors licensed their product on first run to independent theatres. In a majority of said 50 cities the major share of all of the defendants' features were licensed for first run exhibition in theatres affiliated with the major defendants.

148(a). Viewed collectively the major defendants owned 60 percent of the first run theatres in cities with populattions between 25,000 and 100,000.

148(b). In addition to the proof of monopoly control in cities of more than 25,000, there is substantial proof that in approximately 238 towns involving in all but about 17 cases populations of less than 25,000 but having two or more theatres, some single one of the five major defendants, or in about 18 cases two of the defendants, had all the theatres and therefore possessed a complete local monopoly in exhibition. [See Government Exhibit 488.] This Finding is not applicable to Loew's, which had no theatres in the foregoing towns.

148(c). The film distribution in the 1943-44 season shows that one or more of the five major defendants exhibited on

[fol. 161] first run substantially all of the feature films distributed by the five major defendants in about 43 of the 92 cities of over 100 thousand, and substantially all of the feature films distributed by the eight defendants in about 143 of the 320 cities of 25,000 to 100,000. [See Government Exhibits 489, 490, 490A.]

148(d). As distributors, the five major defendants viewed collectively, received approximately 73 percent and the three minor defendants 21% of the domestic film rentals from the films, except Westerns, distributed ~~in the 1943-44~~ season.

148(e). The percentages of first run theatre ownership and domestic film rentals controlled by the major defendants when coupled with the strategic advantages of vertical integration created a power to exclude competition from the distribution and exhibition markets when desired.

148(f). This power might be exercised either against nonaffiliated exhibitors or distributors, for the ownership of what was generally the best first run theatres coupled with the possession by the defendant of the best pictures, enabled them substantially to control the market in first-run pictures.

148(g). There is substantial proof that the intent to exercise the monopoly power existed among the defendants.

149. Loew's operates first-run theatres in 36 of the 92 cities in the United States with more than 100,000 population; in every one of these 36 cities, there are other "first run" theatres exhibiting the features of one or more of the other defendant distributors; in 21 of these 36, one or more of the other first-run theatres are operated by independents.

[fol. 162] 150. Of the 92 cities in the United States having a population in excess of 100,000, Twentieth Century-Fox is interested in first run theatres in 16 and licenses its features to them. In 4 of the remaining cities, none of the defendants has theatre interests. This leaves 72 cities in which there are first run theatres operated by defendants other than Twentieth Century-Fox. In 23 of the 72 cities, Twentieth Century-Fox licenses its features to independent exhibitors.

151. Except for a very limited number of theatres in the very largest cities, the 18,000 and more theatres in the United States exhibit the product of more than one distributor. Such theatres could not be operated on the product of only one distributor.

152. The major defendants aided each other in attaining a monopoly of exhibition and in restricting competition by refraining from having theatre interests in many areas where one of them had theatres.

153. In cities of less than 100,000 in population, Paramount, Warner, Fox and RKO owned or operated theatres either in largely separate market areas or in pools, without more than trifling competition among themselves or with Loew's. In cities having a population of more than 100,000, there was in general little competition among the major defendants, although considerably more than in towns of under 100,000.

153(a). In cities of less than 100,000, Paramount had complete or partial interests in or pooling agreements* [fol. 163] with other defendants affecting 1,236 theatres located in 494 towns. In 13 of these towns containing 31 of the theatres—only 3%—were theatres of another defendant. In 9% of these towns competition between Paramount and the only other defendant in the town was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres; and in this 9% were located 10% of Paramount's theatre interests. And in 88% of the towns, containing 87% of Paramount's theatre interests, Paramount was the only defendant operating theatres. Thus it appears that there was little, if any, theatre competition between Paramount and any other defendant in 97% of the towns of under 100,000 and in respect to 97% of the theatres in which Paramount had an interest.

153(b). Fox had similar theatre interests in 428 theatres located in 177 towns. In 13 of these towns containing 29 Fox theatres, or about 7% thereof, there were theatres of another defendant. In about 93% of the towns containing the same percentage of Fox's theatre interests, Fox was the only defendant operating theatres; in 22 of these towns there was but one theatre and a population capable of supporting only one theatre.

153(c). Warner had similar theatre interests in 306 theatres located in 155 towns of less than 100,000. In 17

* Pooling agreements and joint interests among defendants are treated in Finding 153-153(g) and 154-154(h) as indistinguishable for the purpose of summarizing geographical distribution.

towns, or 11%, containing 30 Warner theatres, or 10% of its holdings, there were theatres of another major defendant. In 3% of the towns, competition between Warner and the only other defendant in the town was substantially lessened or eliminated by means of pooling agreements; [fol. 164] and in this 3% were located 4% of Warner's theatre interests. In 86% of the towns containing the same percentage of Warner's theatre interests, Warner was the only defendant operating theatres. Thus, there appears to have been little, if any, theatre competition between Warner and any other defendant in 89% of the towns and in respect to 90% of the theatres in which Warner had an interest. In 33 of these towns there was but one theatre and a population capable of supporting only one theatre.

153(d). Loew had interests in only 17 theatres located in 14 towns. In 4 towns containing 4 Loew theatres, there were theatres of another defendant. In 2 of the towns, competition was substantially lessened or eliminated by means of joint interests; and in these 2 were located 3 of Loew's theatre interests. In 8 of the towns, containing 10 Loew's theatre interests, Loew was the only defendant operating theatres. Thus, there appears to have been little, if any, theatre competition between Loew and any other defendant in 10 of the towns and in respect to 13 of the theatres in which Loew had an interest.

153(e). RKO had interests in 150 theatres located in 66 towns. In 6 towns, or 10%, containing 6 RKO theatres, or 4%, there was competition with another major defendant. In 60% of the towns, competition was substantially lessened or eliminated by means of pooling agreements, and in this 60% were located 73% of RKO's theatre interests In 30% of the towns, containing 23% of RKO's theatre interests, RKO was the only defendant operating theatres. Thus, there appears to have little, if any, competition between RKO and any other defendant in 90% of the towns and in respect to 96% of the theatres in which RKO had an interest.

[fol. 165] 153(f). The major defendants had interests altogether in 2,020 theatres located in 834 towns. In 26 towns, or 3% containing 100 of their theatres, or 5%, there was competition among some of them. In somewhat over 5% of the towns, competition between them was substantially lessened or eliminated by means of pooling agreements, and in this 5% were located 7% of their theatre

interests. And in somewhat less than 92% of the towns, containing 88% of their theatre interests, only one of the major defendants owned theatres in the area. Thus, there appears to have been little, if any, competition among the five defendants or any of them in 97% of the towns and in respect to 95% of the theatres in which they had an interest.

153(g). The effect of the geographical distribution in towns having a population of less than 100,000 was largely to eliminate competition among all of the defendants in the areas where any of them had theatres. The statistics upon which these findings are based are contained in the appendix to this Court's opinion of July 25, 1949.

154. In cities of over 100,000 Paramount had complete or partial interests in or pooling agreements with other defendants affecting 352 theatres in 49 cities. In 18 of these cities, or 37%, containing 91 Paramount theatres, or 26%, there were theatres of other defendants. In an additional 10% of the cities, containing 17% of Paramount's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with Paramount, both on first and later runs, that competition with Paramount ~~was unsubstantial~~ owing to the dominance which the latter's theatre holdings gave it. In 12% of these cities competition between Paramount [fol. 166] and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 12% were located 18% of Paramount's theatre interest. And in 41% of the cities, containing 39% of Paramount's theatre interests, Paramount was the only defendant operating theatres. Thus, it appears that there was little, if any, theatre competition between Paramount and any other defendant in 63% of the cities of over 100,000 and in respect to 74% of the theatres in which Paramount had an interest.

154(a). Fox had similar theatre interests in 211 theatres located in 17 cities. In 5 of these cities, or 29%, containing 54 Fox theatres, or 26%, there were theatres of other defendants. In an additional 18% of the cities, containing 41% of Fox's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with Fox, both on first and later runs, that competition with Fox was unsubstantial owing to the dominance which the latter's theatre holdings gave it.

In 53% of the cities, containing 33% of Fox's theatre interests, Fox was the only defendant operating theatres. Thus, it appears that there was little, if any, theatre competition between Fox and any other defendant in 71% of the cities and in respect to 74% of the theatres in which Fox had an interest.

154(b). Warner had similar theatre interests in 243 theatres located in 26 cities. In 14 of those cities, or 54% containing 89 theatres, or 37%, there were theatres of other defendants. In an additional 8% of the cities, containing 5% of Warner's theatre holdings, there were other defend- [fol. 167] ants having theatre interests, but those interests were so relatively small as compared with Warner, both on first and later runs, that competition with Warner was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 19% of these cities competition between Warner and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 19% were located 51% of Warner's theatre interests. And in 19% of the cities, containing 7% of Warner's theatre interests, Warner was the only defendant operating theatres. Thus, it appears that there was little, if any, competition between Warner and any other defendant in 46% of the cities and in respect to 63% of the theatres in which Warner had an interest.

154(c). Loew had similar theatre interests in 144 theatres located in 37 cities. In 32 of those cities, or 86% containing 122 Loew theatres, or 85%, there were theatres of other defendants. In 3% of these cities, competition between Loew and the only other defendant in the city was eliminated by means of a pooling agreement affecting all of their theatres, and in this 3% were located 7% of Loew's theatre interest. And in 11% of the cities, containing 8% of Loew's theatre interests, Loew was the only defendant operating theatres. Thus, it appears that there was little, if any, theatre competition between Loew and any other defendant in 14% of the cities and in respect to 15% of the theatres in which Loew had an interest.

154(d). In New York City Loew and RKO divided the neighborhood prior run product of the various defendant distributors under a continuing arrangement so that there [fol. 168] was no competition between them in obtaining

pictures. On one occasion where Paramount was having a long dispute with Loew's as to rental terms for Paramount films to be shown in Loew's New York neighborhood circuit of theatres, no attempt was made by Paramount to lease its films to RKO for exhibition in the latter's circuit, nor was any effort made by RKO to procure Paramount films as they both evidently preferred to adhere to the existing arrangement, under which Loew's circuit consistently exhibited the films of itself, Paramount, United Artists, Columbia and half of Universal, while RKO exhibited the films of itself, Fox, Warner, and half of Universal. Accordingly, the showing that 85% of Loew's theatres are in competition with theatres of other defendants is misleading and may properly be reduced by the exclusion of its New York neighborhood theatres. If this is done, it would give Loew a percentage of approximately 42% of its theatres in competition with other defendants in cities over 100,000.

154(e). RKO had similar theatre interests in 256 theatres in 31 cities. In 22 of these cities, or 72%, containing 190 theatres, or 74%, there were theatres of other defendants, In an additional 6% of the cities, containing 4% of RKO's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with RKO, both on first and later runs, that competition with RKO was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 16% of these cities, competition between RKO and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 16% were located 15% of RKO's [fol. 169] theatre interests. And in 6% of the cities, containing 7% of RKO's theatre interests, RKO was the only defendant operating theatres. Thus, it appears that there was little, if any, theatre competition between RKO and other defendants in 28% of the cities and in respect to 26% of the theatres in which RKO had an interest.

154(f). Approximately 58% of RKO theatre interests were located in New York on neighborhood runs, and the same comments as to distribution of film made in regard to Loew's are applicable to RKO. If its New York neighborhood theatre interests were excluded from the category of theatres in competition with other defendants, the RKO

percentage would then be only about 16% in competition with other defendants.

154(g). The major defendants had interests altogether in 1,112 theatres located in 87 cities of more than 100,000. In 46% of these cities, containing 23% of their theatre interests, only one of the major defendants owned theatres in the area. In 11.5% of the cities, competition between them was substantially lessened or eliminated by means of pooling agreements, and in this 11.5% were located 16% of their theatre holdings. In an additional 11.5% of the cities, containing 17% of their theatre interests, there was more than one defendant having theatre interests in the city, but the position of one defendant was so dominant relative to the others that competition between them was unsubstantial. In 31% of the cities, containing 44% of their theatre interests, there was competition among the defendants. But the New York neighborhood theatres of Loew and RKO, which are included in reaching the 44% figure, should properly be excluded because there is no competition between Loew and RKO in obtaining pictures for the reasons we have already given. This would reduce the [fol. 170] percentage of defendants' theatres which compete with one another to 27.

154(h). The effect of the geographical distribution in cities having a population of more than 100,000 was substantially to limit competition among the major defendants.

155. Although there was no agreement to divide territory geographically in the original organization of the defendant's theatre circuits, the geographical distribution of theatres among the major defendants became a part of a system in which competition was largely absent and the status of which was intentionally maintained by fixed runs, clearances and prices, by pooling agreements and joint ownerships among the major defendants, and by cross-licensing which made it necessary that they should work together.

156. In the relatively few areas where more than one of the major defendants had theatres, competition for first-run licensing privileges was generally absent because the defendants customarily adhered to a set method in the distribution and playing of their films.

156(a). A study of four seasons between the years 1936 and 1944 shows that during this period the privilege of

first-run exhibition of a defendant's films was ordinarily transferred from one defendant to another only as the result of dissolution of a theatre operating pool or an arbitrary division of of the product known as a "split."

156(b). Effective relief from the monopoly power of and its exercise by the major defendants cannot be obtained without divorcement. No adequate competition among the [fol. 171] defendants or between defendants and independents can exist in the presence of interdependency among the defendants on the one hand to obtain pictures for their own theatres and on the other to obtain theatre outlets for their own pictures. Divorcement is necessary to prevent the major defendants from being in a state of interdependence which too greatly restricts competion. Divorcement is a necessary remedy to introduce competition into defendants' system of fixed admission prices, clearances and runs, and to remove a major incentive to discriminatory trade practices.

157. The arbitration system and the Appeal Board which has been a part of it have been useful in the past and should be continued upon terms to be settled by the Court.

158. Evidence submitted since the remand of this case has been considered by this Court. Such evidence has been used by the Court in making its findings as to the situation in 1945. The change in status and practices since 1945 revealed by this evidence has been insufficient to warrant a change in the findings and judgment entered herein.

159. A consent judgment was entered on March 3, 1949, against defendants Paramount Pictures Inc. and Paramount Film Distributing Corporation, and neither of these companies nor their counsel appeared or participated in any of the proceedings after the entry of that consent judgment, except that, on April 21, 1949, counsel for these companies presented, and the court made and directed the entry of, an order severing and terminating, as of March 3, 1949, this action as against said defendants.

160. A consent judgment was entered on November 8, [fol. 172] 1948, against defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation and Keith-Albee-Orpheum Corporation, and none of these companies nor their counsel appeared or participated in any of the proceedings

after the entry of that consent judgment, except that on January 18, 1950, counsel for these companies presented, and the court made and directed the entry of, an order styled United States v. Radio-Keith-Orpheum Corporation, et al. severing and terminating, as of November 8, 1948, this action as against said defendants.

[fol. 173] Conclusions of Law

1. The Court has jurisdiction of this cause under the provisions of the Act of July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," hereinafter referred to as the Sherman Act.

2. Universal Pictures Company, Inc. and Screen Gems, Inc. have not violated the Sherman Act and should be dismissed as defendants herein.

3. None of the defendants herein has violated the Sherman Act by monopolizing or attempting to monopolize or conspiring to monopolize the production of motion picture films.

4. The consent decree entered herein on November 20, 1940 does not foreclose enforcement in this suit at this time of any rights or remedies which the plaintiff may have against any of the defendants by virtue of violations of the Sherman Act by them, except such acts as were in accord with such decree during the period it was in force.

5. None of the defendants herein has violated the Sherman Act by combining, conspiring or contracting to restrain trade in any part of the business of producing motion pictures or by monopolizing, attempting to monopolize, or conspiring to monopolize such business.

6. The defendants, and each of them are entitled to judgment dismissing all claims of the plaintiff based upon their acts as producers, whether as individuals or in conjunction with others.

7. The defendents Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation, (formerly known as Vitagraph, Inc.); Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film

Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, both before and after the entry of said consent decree, in violation of the Sherman Act by:

(a) Acquiescing in the establishment of a price fixing system by conspiring with one another and with Paramount and RKO to maintain theatre admission prices;

(b) By conspiring with one another and with Paramount and RKO to restrict competition for theatre patrons with each other and with independents through a system of admission price fixing;

(c) Conspiring with each other and with Paramount and RKO to maintain a nation-wide system of runs and clearances which is substantially uniform in each local competitive area;

(d) Fixing, together with Paramount and RKO, a system of runs and clearances which prevented effective competition by outsiders and which was designed to protect the theatre holdings of the major defendants and to safeguard the revenue therefrom.

8. The distributor-defendants Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.); Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, both [fol. 175] before and after the entry of said consent decree, in violation of the Sherman Act, by:

(a) Conspiring with each other and with Paramount and RKO to maintain a nation-wide system of fixed minimum motion picture theatre admission prices;

(b) Agreeing individually with their respective licenses to fix minimum motion picture theatre admission prices;

(c) Conspiring with each other and with Paramount

and RKO to maintain a nation-wide system of runs and clearances which is substantially uniform as to each local competitive area;

(d) Agreeing individually with their respective licensees to grant discriminatory license privileges to theatres affiliated with other defendants and with large circuits as found in Finding 110 above;

(e) Agreeing individually with such licensees to grant unreasonable clearance against theatres operated by their competitors;

(f) Making master agreements and franchises with such licensees;

(g) Individually conditioning the offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films, except in the case of the United Artists Corporation;

9. The exhibitor-defendants Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation, have unreasonably restrained trade and Commerce in the distribution and exhibition of motion pictures both before and after the entry of said consent decree in violation of the Sherman Act by:

[fol. 176] (a) Jointly operating motion picture theatres with each other, with Paramount and RKO, and with independents through operating agreements or profit-sharing leases;

(b) Jointly owning motion picture theatres with each other, with Paramount and RKO, and with independents through stock interests in theatre buildings;

(c) Conspiring with each other, with the distributor-defendants named in Paragraph 8 above, and with Paramount and RKO, to fix substantially uniform minimum motion picture theatre admission prices, runs, and clearances;

(d) Conspiring with the distributor-defendants named in Paragraph 8 above and with Paramount and RKO to discriminate against independent competitors in fixing minimum admission price, run, clearance, and other license terms.

10. The formula deals, master agreements and franchises referred to in Findings 86, 88, and 89 have tended to restrain trade and violate Section 1 of the Sherman Act.

11. Block-booking, as hereinabove defined, violates the Sherman Act.

12. As an aid to the conspiracy to fix prices, runs, and clearances hereinabove described, and as a means for carrying out such conspiracy, the maintenance of vertical integration by the major defendants named in Paragraph 7 above has violated the Sherman Act and effected a situation where the creation of competition requires dissolution of these vertical integrations.

13. The collective monopoly power of the defendants named in Paragraph 7 above (taken together with Paramount and RKO) to exclude competitors from first run coupled with their intent to exercise this power violated Section 2 of the Sherman Act.

14. Their use of this power to actually exclude independ- [fol. 177] ents from the first run market and to restrict the distribution of pictures to independents violated Sections 1 and 2 of the Sherman Act.

15. The power of the defendants named in Paragraph 7 above to fix runs and clearances when exercised by the major defendants named in Paragraph 7 above to exclude independent competitors violated the Sherman Act.

16. Loew's, Incorporated, has violated the Sherman Act by conspiring with RKO to monopolize and monopolizing the first neighborhood run in New York City, and by the dividing of that market between itself and RKO.

17. Further conclusions of law are made and embodied in the decree filed herewith.

Augustus N. Hand, United States Circuit Judge;
Henry W. Goddard, United States District Judge;
Alfred C. Coxe, United States District Judge.

Dated: February 8, 1950.

[fol. 178] IN UNITED STATES DISTRICT COURT

MANDATE—Filed July 8, 1950

UNITED STATES OF AMERICA, ss:

The President of the United States of America.

To the Honorable the Judges of the United States District Court for the Southern District of New York, (Seal of the Supreme Court of the United States.)

GREETING:

Whereas, lately in the United States District Court for the Southern District of New York, before you, or some of you, in a cause between the United States of America, Plaintiff, and Loew's Incorporated, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation et al., Defendants, Equity No. 87-273, wherein the decree of the said District Court after remand from the Supreme Court of the United States was duly entered in said cause on the 8th day of February, A.D. 1950, which decree is fully set out in the record of said cause in the office of the Clerk of said District Court and is incorporated herein by reference thereto; as by the inspection of the transcript of the record of the said District Court, which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of appeals sued out by Loew's Incorporated and certain other defendants and the United States of America, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and forty-nine, the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was duly submitted.

[fol. 179] On consideration Whereof, it is now here ordered, adjudged and decree by this Court that the decree of the said District Court, dated February 8, 1950, be, and the same is hereby, affirmed.

June 5, 1950

You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, the seventh day of July, in the year of our Lord one thousand nine hundred and fifty.

Charles Elmore Cropley, Clerk of the Supreme Court of the United States, by Hugh W. Barr, Deputy.

[File endorsement omitted.]

[fol. 180] UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF SUTPHEN ESTATES, INC., FOR ALLOWANCE OF APPEAL

Sutphen Estates Inc., Petitioner, having filed in this Court a Motion for Leave to Intervene and Pleading in Intervention, brought on by order to show cause dated January 2, 1951, so that it might be heard in connection with the settlement of the judgment herein consented to by the United States of America, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.) and Warner Bros. Circuit Management Corporation and in respect of Section VIII thereof, consented to by Harry M. Warner, Albert Warner and Jack L. Warner, and said Motion having come on for argument on January 4, 1951 prior to the signing by the Court of [fol. 181] said consent judgment and the Court having announced at the conclusion of said argument its decision denying said Motion and said Petitioner herein deeming itself aggrieved by the order on said decision entered on February 26, 1951, denying its Motion for Leave to Intervene and by the consent judgment made and entered on January 4, 1951, does hereby petition for an appeal to the Supreme Court of the United States from said order and said consent judgment because of errors prejudicial to it which are set forth in the Assignment of Errors presented and filed herewith.

Pursuant to Rule 12 of the Rules of the Supreme Court of the United States, petitioner presents to this Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain the appeal herein, and files herewith its Assignment of Errors and Prayer for Reversal.

WHEREFORE, petitioner prays that an appeal be allowed to the Supreme Court of the United States, that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which the said order and consent judgment were based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided. And petitioner further prays that an order be made fixing the amount of security which petitioner shall give and furnish upon such appeal.

Dated: March 2, 1951.

/S/. Bertram F. Shipman, of Mudge, Stern, Williams & Tucker, No. 40 Wall Street, New York 5, N. Y., Attorneys for Petitioner, Sutphen Estates, Inc.

[fol. 182] United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal

Petitioner, Sutphen Estates, Inc., in connection with its petition for an appeal to the Supreme Court of the United States, hereby assigns error to the Consent Judgment as to the Warner defendants made on January 4, 1951 and entered on January 5, 1951 by the United District Court of the Southern District of New York in the above entitled cause, and to the order made and entered on February 26, 1951 by said Court in said cause denying Petitioner's motion for leave to intervene in said cause, and says that error was committed by said District Court in the making and entering of said Consent Judgment and said order to the prejudice of Petitioner in the following particulars:

[fol. 183] (1) The Court erred in denying Petitioner's Motion for Leave to Intervene;

(2) The Court erred in denying Petitioner's right to file its Pleading in Intervention;

(3) The Court erred in failing to grant the relief requested by Petitioner's Pleading in Intervention;

(4) The Court erred in signing the Consent Judgment without allowing Petitioner to intervene and be

heard on the settlement of said Consent Judgment in so far as valuable contract and property rights of Petitioner were affected by said Consent Judgment;

(5) The Court erred in signing the Consent Judgment without provision therein for the preservation of the rights and property of Petitioner in, to and in respect of the guarantee contract between Petitioner and defendant, Warner Bros., Inc.;

(6) The Court erred in failing to provide for the preservation of the rights and property of Petitioner in, to and in respect of the guaranty contract between Petitioner and defendant, Warner Bros., Inc.;

(7) The Court erred in failing to provide an equivalent or appropriate substitute for the guaranty obligations of defendant, Warner Bros., Inc. under its guaranty contract with Petitioner;

(8) The Court erred in declining to hold that the entry of the Consent Decree without notice to Petitioner and without opportunity to Petitioner to be [fol. 184] heard and present its claim in respect of the guaranty obligation of Warner deprived Petitioner of property without due process of law in violation of the due process clause of the Fifth Amendment of the Constitution of the United States of America.

Wherefore Petitioner prays that the order of the District Court denying Petitioner's motion for leave to intervene be held erroneous and that said order be reversed, that the action of the District Court in failing to make provision for the conservation of, or for a substitute for, the guaranty obligations of defendant Warner Bros., Inc. under its guaranty contract with Petitioner be held erroneous and that said Consent Judgment accordingly be reversed, modified or corrected, and that an appropriate judgment be entered herein.

Dated: March 2, 1951.

/S/. Bertram F. Shipman, of Mudge, Stern, Williams & Tucker, 40 Wall Street, New York 5, N. Y., Attorneys for Petitioner, Sutphen Estates, Inc.

[fol. 185] UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

Sutphen Estates, Inc., having filed a petition for appeal to the Supreme Court of the United States from the judgment made on January 4, 1951 and entered on January 5, 1951, consented to by the United States of America, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.), Warner Bros. Circuit Management Corporation, and in respect of Section VIII thereof, consented to by Harry M. Warner, Albert Warner and Jack L. Warner, and from the order entered herein on February 26, 1951, together with the Assignment of Errors, Prayer for Reversal and Statement as to Jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided, it is hereby

[fol. 186] ORDERED, that an appeal by the above named petitioner in the above entitled cause to the Supreme Court of the United States from said consent judgment heretofore made on January 4, and entered on January 5, 1951 and from the order heretofore entered on February 26, 1951 be and the same hereby is allowed and that the record on appeal be made and certified and transmitted to the Supreme Court of the United States in accordance with the rules of that Court, said appeal being made returnable forty (40) days from the date hereof; and it is hereby further

ORDERED, that the bond on appeal to be approved by this Court is fixed at the sum of $500.

Dated: March 2nd, 1951.

/S/. Augustus N. Hand, Circuit Judge. /S/. Alfred C. Coxe, D.J.

[fols. 187-189] UNITED STATES DISTRICT COURT

[Citation in usual form, showing service, omitted in printing.]

[fol.190-191] [Bond on appeal for $500 approved and filed March 9, 1951 omitted in printing.]

~~[fols. 192-196] [Notice and proof of service~~ of appeal papers omitted in printing.]

[fol. 197] UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States District Court:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers, viz.:

1. Opinion of the District Court (sub nom. United States v. Paramount Pictures, Inc., et al.) dated July 25, 1949.
2. Findings of fact and conclusions of law of the District Court, dated February 8, 1950.
3. Final decree of the District Court, dated February 8, 1950 (included as Exhibit 1 in Statement as to Jurisdiction, Item 13, below).

[fol. 198] 4. Mandate of the Supreme Court made July 7, 1950 and filed in the District Court July 8, 1950.

5. Consent Judgment of the District Court as to the Warner Defendants made January 4, 1951 and entered January 5, 1951 (included as Exhibit 2 in Statement as to Jurisdiction, Item 13, below).
6. Order to Show Cause on Motion to Intervene, Affidavit and Pleading in Intervention of Sutphen Estates, Inc., dated January 2, 1951 (included as Exhibit 4 in Statement as to Jurisdiction, Item 13, below).
7. Order denying intervention of Sutphen Estates, Inc., dated February 26, 1951 (included as Exhibit 3 in Statement as to Jurisdiction, Item 13, below).

8. Petition of Sutphen Estates, Inc. for allowance of appeal dated March 2, 1951.

9. Assignment of Errors and Prayer for Reversal by Sutphen Estates, Inc., dated March 2, 1951.

10. Order Allowing Appeal of Sutphen Estates, Inc., dated March 2, 1951.

11. Citation, dated March 2, 1951.

12. Appeal bond of American Surety Company.

13. Statement as to Jurisdiction with Exhibits dated March 2, 1951.

14. Notice including Statement required by paragraph 3 of Rule 12 of the Rules of the Supreme Court.

15. Proof of Service of the documents designated in paragraphs 8, 9, 10, 11, 13, 15, above.

16. This Praecipe and accompanying Proof of Service.

[fols. 199-202] Said transcript is to be prepared as required by law and the rules of this Court and rules of the Supreme Court of the United States, and is to be filed in the office of the Clerk of the Supreme Court of the United States.

Yours, etc.

Bertram F. Shipman, of Mudge, Stern, Williams & Tucker, 40 Wall Street, New York 5, N. Y., Attorneys for Appellant.

Date: March 7, 1951.

[fol. 203] [Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 204] UNITED STATES DISTRICT COURT

[Title omitted]

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD DESIRED TO BE INCLUDED

To the Clerk of the United States District Court:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and in-

clude in said transcript in their chronological order the following papers, viz.:

1. Consent Decree of the District Court as to the RKO Defendants made and entered November 8, 1948.

2. Consent Judgment of the District Court as to the Paramount Defendants made and entered March 3, 1949.

3. Stenographer's minutes of the hearings of January 4, 1951 in the District Court relating to the proposed consent judgment as to the Warner Defendants and relating to the Motion to Intervene by Sutphen Estates, Inc.

4. Order of the District Court made March 1, 1951 and entered March 2, 1951 with the annexed affidavit of Edward K. Hessberg, sworn to March 1, 1951, which order severs and terminates as against the Warner Defendants, the [fol: 205] action entitled United States of America vs. Loew's Incorporated, et al.

5. This Designation Of Additional Portions Of The Record Desired To Be Included and accompanying Proof of Service.

Said transcript is to be prepared as required by law and the rules of this Court and rules of the Supreme Court of the United States, and is to be filed in the office of the Clerk of the Supreme Court of the United States.

Yours, etc.

Joseph M. Proskauer, R. W. Perkins, 321 West 44th Street, New York 18, N. Y. Attorneys for Warner Defendants-Appellees.

Date: April 5, 1951.

[fol. 206] UNITED STATES DISTRICT COURT

[Title omitted]

CONSENT DECREE AS TO THE RKO DEFENDANTS

[fol. 206-A] The plaintiff, United States of America, having filed its Amended and Supplemental Complaint in this action on November 14, 1940; the defendants, including Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., RKO Proctor Corporation RKO Midwest Corporation,

and Keith-Albee-Orpheum Corporation (hereafter sometimes referred to as the "RKO defendants"), having filed their Answers to such Complaint, denying the substantive allegations thereof; the Court after trial having entered a decree herein, dated December 31, 1946, as modified by order entered February 11, 1947; the plaintiff and the RKO defendants, among others, having appealed from such decree; the Supreme Court of the United States having in part affirmed and in part reversed such decree, and having remanded this cause to this Court for further proceedings in conformity with its opinion dated May 3, 1948; and this Court having, on June 25, 1948, by order made the mandate and decree of the Supreme Court the order and judgment of this Court; and

[fol. 206-B] The RKO defendants having represented to the plaintiff and to this Court that they propose to put into effect within ninety days of the date hereof a plan of reorganization which will have as its object and effect the divorcement of RKO's production-distribution assets from RKO's theatre assets; that pursuant to such plan two new holding companies will be formed, one of which (hereafter called the New Picture Company) will own and control the subsidiaries of Radio-Keith-Orpheum Corporation presently engaged in the production and distribution of motion pictures, and the other of which (hereafter called the New Theatre Company) will own and control the subsidiaries of Radio-Keith-Orpheum Corporation presently engaged in the exhibition of motion pictures; and that thereafter Radio-Keith-Orpheum Corporation will be dissolved and its stockholders will own all of the capital stock of the New Picture Company and of the New Theatre Company; and that on October 9, 1948, Howard H. Hughes was the owner of record of approximately 24% of the common stock of Radio-Keith-Orpheum Corporation and that on such date no other person or corporation was the beneficial owner of record of as much as 1% of such stock;

The RKO defendants having consented to the entry of this decree before the taking of any testimony upon the issues and matters open upon the remand of this cause, and without any findings of fact upon such issues and matters, and upon conditions that neither such consent, nor this decree, nor the entry of this decree, nor any statement, provision or requirement contained in this decree, shall be

or shall be construed as being an admission or adjudication or evidence that the allegations of the Petition or of the Amended and Supplemental Complaint, or any of them, are or is true in so far as they relate to the issues and matters so open, or that the RKO defendants, or any one or more of them, have or has violated or are or is violating any statute or law with respect to the issues and matters so open; and The United States of America by its counsel [fol. 206-C] having consented to the entry of this decree and to each and every provision thereof; and the Court having considered the matter,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed as follows:

I

The Complaint is dismissed as to all claims made against the RKO defendants based upon their acts as producers of motion pictures, whether as individuals or in conjunction with others.

II

A. The defendants, Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., their officers, agents, servants and employees are each hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.

3. From granting any clearance between theatres not in substantial competition.

4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the [fol 206-D] run granted. Whenever any clearance provision is attacked as not legal under the provisions

of this decree, the burden shall be upon the distributor to sustain the legality thereof.

5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal," covering the exhibition of features in a number of theatres usually comprising a circuit.

7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty percent of such features not trade shown prior to the granting [fol. 206-E] of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

B. Upon the dissolution of Radio-Keith-Orpheum Corporation in accordance with the plan of reorganization outlined in the recitals of this decree, and upon the New Picture Company succeeding to the production-distributing assets, the RKO defendants shall cause the New Picture Company to file with the Court its consent to be bound by the terms of sections II, IV, V, VII and VIII of this decree, and

thereafter the New Picture Company shall be in all respects bound by the terms of such sections.

C. At any time after the entry of a final decree in this cause as to the defendants Universal Corporation and Columbia Pictures Corporation, or either of them, Radio-Keith-Orpheum Corporation and the New Picture Company, and RKO Radio Pictures, Inc., or either, or the successor or successors of either, may file herein a written notice of election to be relieved from further compliance with this decree and to comply with the provisions of such decree against said defendants Universal Corporation or Columbia Pictures Corporation or either of them, as it shall elect; and thereupon an order or supplemental decree shall be entered on the application of such party or parties so electing, which shall subject such party or parties to the provisions of such other decree and entitle it or them to the benefits of any terms thereof, and relieve it or them from further compliance with the provisions of this section of this decree. The New Picture Company further agrees that this decree may be amended at any time after the entry of such other decree to include such new provisions against film licensing discriminations as may be included in such other decree.

[fol. 206-F] III

A. The defendants Radio-Keith-Orpheum Corporation, Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, and RKO Midwest Corporation (herein referred to as "the RKO exhibitor-defendants"), their officers, agents, servants and employees are each hereby enjoined:

1. From performing or enforcing agreements referred to in paragraphs A-5 and A-6 of the foregoing section II hereof to which it may be a party.

2. From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

3. From making or continuing to perform agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

4. From making or continuing leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share of the profits.

5. From continuing to own or acquiring any beneficial interest in any theatre, whether in fee or shares of stock or otherwise, in conjunction with another defendant. The existing relationships which violate this provision shall be determined by December 31, 1948. In dissolving such relationships one defendant may acquire the interest of another defendant if such defend- [fol. 206-G] ant desiring to acquire such interest shall show to the satisfaction of the court, and the court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures.

6.(a) From acquiring a beneficial interest in any theatre, other than those named in paragraph 9 hereof, unless the acquiring defendant shall show to the satisfaction of the court, and the court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures.

(b) At any time after the entry of a final decree in this cause in which Paramount Pictures, Inc., Loew's, Incorporated, Warner Bros. Pictures, Warner Bros. Circuit Management Corporation, Twentieth Century Fox Film Corporation, or National Theatres, Inc., or either of them, are bound by any provisions relating to the acquisition of beneficial interests in theatres other than acquisitions in conjunction with other exhibitors, Radio-Keith-Orpheum Corporation, Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation and the New Theatre Company, or any of them, or their successor or successors, may file herein a written notice of election to be relieved from further compliance with subparagraph (a) of this paragraph 6 and to comply with such provisions; and thereupon an order or supplemental decree shall be entered on the application of such party

or parties so electing, which shall subject such party or parties to the provisions of such other decree relating to the acquisition of beneficial interests in theatres, ~~and entitle it or them to the benefits of any terms there-~~of, and relieve it or them from further compliance with [fol. 206H] the terms of subparagraph (a) of this paragraph of this decree.

7. From operating, booking, or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

8. From making or enforcing any agreement which restricts the right of any other exhibitor to acquire a motion picture theatre.

9. From acquiring or continuing to own in conjunction with any actual or potential independent exhibitor any beneficial interest in motion picture theatres. The theatres in which such ownership now exist are the following:

Theatre	*Location*
Academy	New York, New York
Ace	Ozone Park, New York
Alba	Brooklyn, New York
Albany	New Brunswick, New Jersey
Alden	Jamaica, New York
Alhambra	Brooklyn, New York
Ambassador	Brooklyn, New York
Appollo	Jersey City, New Jersey
Astoria	Queens, New York
Bay	Bay City, Michigan
Bayside	Bayside, New York
Benson	Brooklyn, New York
Beverly	Brooklyn, New York
Big Rapids	Big Rapids, Michigan
Bijou	Battle Creek, Michigan
Biltmore	Brooklyn, New York
Boulevard	Jackson Heights, New York
[fol. 206-I]	
Broad	Trenton, New Jersey
Broadway	Astoria, Queens, New York
Broadway	Haverstraw, New York
Broadway	Nyack, New York

Theatre	*Location*
Bronxville	Bronxville, New York
Brook	Bound Brook, New Jersey
Brunswick	Trenton, New Jersey
Caldwell	St. Joseph, Michigan
Cameo	Ossining, New York
Capitol	Brooklyn, New York
Capitol	Flint, Michigan
Capitol	Jackson, Michigan
Capitol	Jersey City, New Jersey
Capitol	Kalamazoo, Michigan
Capitol	Lansing, Michigan
Capitol	Owosso, Michigan
Capitol	Portchester, New York
Capitol	Trenton, New Jersey
Carroll	Brooklyn, New York
Casino	Ozone Park, New York
Castle Hill	Bronx, New York
Center	Bay City, Michigan
Center	Cadillac, Michigan
Center	Grand Rapids, Michigan
Center	Holland, Michigan
Center	Ionia, Michigan
Center	Ludington, Michigan
Center	Owosso, Michigan
Center	Saginaw, Michigan
Center	Willow Run, Michigan
Centre	South Haven, Michigan

[fol. 206-J]

Claridge	Brooklyn, New York
Clinton	Brooklyn, New York
Colonial	Brooklyn, New York
Colonial	Holland, Michigan
Colony	Brooklyn, New York
Commodore	Brooklyn, New York
Congress	Brooklyn, New York
Corona	Corona, New York
Cove	Glen Cove, New York
Crescent	Astoria, Queens, New York
Cross Bay	Ozone Park, New York
Crosswell	Adrian, Michigan
Crotona	Bronx, New York

Theatre	*Location*
Culver	Brooklyn, New York
Dawn	Hillsdale, ~~Michigan~~
Della	Flint, Michigan
Desmond	Port Huron, Michigan
Duffield	Brooklyn, New York
Dumont	Dumont, New Jersey
Eagle	Pontiac, Michigan
Eastern Parkway	Brooklyn, New York
Eastown	Grand Rapids, Michigan
Elm	Brooklyn, New York
Embassy	Brooklyn, New York
Embassy	Portchester, New York
Englewood	Englewood, New Jersey
Family	Adrian, Michigan
Family	Monroe, Michigan
Family	Port Huron, Michigan
Folly	Brooklyn, New York
Forest Hills	Forest Hills, New York
[fol. 206-K]	
Four Star	Grand Rapids, Michigan
Franklin	Saginaw, Michigan
Fuller	Kalamazoo, Michigan
Fulton	Jersey City, New Jersey
Garden	Flint, Michigan
Garden	Ozone Park, New York
Gem	Brooklyn, New York
Gibson	Greenville, Michigan
Gladmer	Lansing, Michigan
Glen	Glen Cove, New York
Glenwood	Brooklyn, New York
Granada	Corona, New York
Grand	Astoria, Queens, New York
Grand	Chicago, Illinois
Grand	Grand Haven, Michigan
Hackensack	Hackensack, New Jersey
Halsey	Brooklyn, New York
Hamilton	Hamilton Township, New Jersey
Hempstead	Hempstead, New York
Highway	Brooklyn, New York
Hill	Hillsdale, Michigan

Theatre	*Location*
Hillstreet	Los Angeles, California
Holland	Holland, Michigan
Interboro	Bronx, New York
Ionia	Ionia, Michigan
Jackson	Jackson Heights, New York
Jamaica	Jamaica, New York
Jerome	Ozone Park, New York
Keith-Albee	Huntington, West Virginia
Kent	Grand Rapids, Michigan

[fol. 206-L]

Kew Gardens	Kew Gardens, New York
Kinema	Brooklyn, New York
Lafayette	Suffern, New York
Lake	Benton Harbor, Michigan
Lansing	Lansing, Michigan
Lefferts	Richmond Hill, New York
Liberty	Benton Harbor, Michigan
Liberty	Elizabeth, New Jersey
Lincoln	Trenton, New Jersey
Lincoln	Kearney, New Jersey
Lynbrook	Lynbrook, New York
Lyric	Alpena, Michigan
Lyric	Cadillac, Michigan
Lyric	Ludington, Michigan
Lyric	Manistee, Michigan
Lyric	Traverse City, Michigan
Majestic	Columbus, Ohio
Majestic	Grand Rapids, Michigan
Majestic	Jackson, Michigan
Majestic	Jersey City, New Jersey
Majestic	Port Huron, Michigan
Maltz	Alpena, Michigan
Manhasset	Manhasset, New York
Marble Hill	Bronx, New York
Marboro	Brooklyn, New York
Marcy	Brooklyn, New York
Martha Washington	Ypsilanti, Michigan
Maspeth	Maspeth, New York
Mecca	Saginaw, Michigan
Meserole	Brooklyn, New York
Michigan	Ann Arbor, Michigan

[fol. 206-M] *Theatre*	*Location*
Michigan	Battle Creek, Michigan
Michigan	Jackson, Michigan
Michigan	Kalamazoo, Michigan
Michigan	Lansing, Michigan
Michigan	Muskegon, Michigan
Michigan	Saginaw, Michigan
Michigan	South Haven, Michigan
Michigan	Traverse, Michigan
Midway	Forest Hills, New York
Model	South Haven, Michigan
Monroe	Monroe, Michigan
Monticello	Jersey City, New Jersey
Nemo	New York, New York
Northtown	Lansing, Michigan
Oakland	Pontiac, Michigan
Oasis	Ridgewood, New York
Ogden	Bronx, New York
Orpheum	Ann Arbor, Michigan
Orpheum	Huntington, West Virginia
Orpheum	Kalamazoo, Michigan
Orpheum	Pontiac, Michigan
Our	Grand Rapids, Michigan
Palace	Bergenfield, New Jersey
Palace	Flint, Michigan
Palace	Trenton, New Jersey
Pantages	Hollywood, California
Parkhill	New York, New York
Park Plaza	Bronx, New York
Parthenon	Brooklyn, New York
Pascack	Westwood, New Jersey
Pelham	Bronx, New York

[fol. 206-N]

Pilgrim	Bronx, New York
Playhouse	Great Neck, New York
Plaza	Englewood, New Jersey
Post	Battle Creek, Michigan
Rainbow	Brooklyn, New York
Ramsdell	Manistee, Michigan
Reade	Highland Park, New Jersey
Reade's Trent	Trenton, New Jersey
Ready	Niles, Michigan

Theatre	*Location*
Regent	Allegan, Michigan
Regent	Battle Creek, Michigan
Regent	Bay City, Michigan
Regent	Flint, Michigan
Regent	Jackson, Michigan
Regent	Kearny, New Jersey
Regent	Muskegon, Michigan
Republic	Brooklyn, New York
Rex	East Rutherford, New Jersey
Rex	Jackson, Michigan
Rialto	Jersey City, New Jersey
Rialto	Pontiac, Michigan
Rialto	Three Rivers, Michigan
Ridgewood	Brooklyn, New York
Rivera	Brooklyn, New York
Riverside	New York, New York
Riviera	New York, New York
Riviera	Niles, Michigan
Riviera	Three Rivers, Michigan
Rivoli	Hempstead, New York
Rivoli	New Brunswick, New Jersey
Rivoli	Rutherford, New Jersey
[fol. 206-O]	
RKO Proctor's	Newark, New Jersey
Robinhood	Grand Haven, Michigan
Rockland	Nyack, New York
Roosevelt	Flushing, New York
Roosevelt	Woodhaven, New York
Roxy	Flint, Michigan
Roxy	Sturgis, Michigan
Royal	Grand Rapids, Michigan
Savoy	Brooklyn, New York
Scarsdale	Scarsdale, New York
Senate	Brooklyn, New York
Silver	Greenville, Michigan
Southtown	Lansing, Michigan
Square	Bronx, New York
Squire	Great Neck, New York
Stadium	Brooklyn, New York
State	Ann Arbor, Michigan
State	East Lansing, Michigan

Theatre	*Location*
State	Flint, Michigan
State	Huntington, West Virginia
State	Jersey City, New Jersey
State	Kalamazoo, Michigan
State	Muskegon, Michigan
State	New Brunswick, New Jersey
State	Pontiac, Michigan
State	Trenton, New Jersey
Steinway	Astoria, Queens, New York
Stoddard	New York, New York
Stone	Brooklyn, New York
Strand	Battle Creek, Michigan
Strand	Flint, Michigan

[fol. 206-P]

Strand	Jersey City, New Jersey
Strand	Niles, Michigan
Strand	Owosso, Michigan
Strand	Pontiac, Michigan
Strand	Rockville Center, New York
Strand	Saginaw, Michigan
Strand	Sturgis, Michigan
Sunnyside	Woodside, New York
Supreme	Brooklyn, New York
Surf	Brooklyn, New York
Teaneck	Teaneck, New Jersey
Temple	Saginaw, Michigan
Times	Cincinnati, Ohio
Tipton	Huntington, West Virginia
Tivoli	Jersey City, New Jersey
Trabay	Traverse, Michigan
Triboro	Astoria, Queens, New York
Tuxedo	Bronx, New York
Uptown	Kalamazoo, Michigan
Utica	Brooklyn, New York
Valentine	Bronx, New York
Valley Stream	Valley Stream, New York
Victoria	Ossining, New York
Victory	Bayside West, New York
Vogue	Manistee, Michigan
Waldorf	Brooklyn, New York
Walker	Brooklyn, New York

Theatre	*Location*
Ward	Bronx, New York
Wealthy	Grand Rapids, Michigan
Westown	Bay City, Michigan
Westwood	Westwood, New Jersey

[fol. 206-Q]

Whitney	Ann Arbor, Michigan
Wilson	Brooklyn, New York
Wolverine	Saginaw, Michigan
Wuerth	Ann Arbor, Michigan
Wuerth	Ypsilanti, Michigan
43rd Street	Long Island City, New York
77th Street	New York, New York

The existing joint ownership in the above enumerated theatres shall be terminated within one year from the date hereof in accordance with the following provisions:

(a) As to not to exceed thirty theatres from the above list, the RKO exhibitor-defendants or the New Theatre Company may elect to terminate such ownership either by acquiring the interest of the co-owner or co-owners therein, or by sale of the interest of RKO therein in accordance with paragraph (b) hereof. Such thirty theatres may include the Alden Theatre, Jamaica, N. Y.; the Midway Theatre, Forest Hills, N. Y.; and two of the following theatres: Castle Hill, Marble Hill, and Pelham Theatres, Bronx, New York. Except for such four theatres, none of such thirty theatres shall be located in New York City. In the event that the existing joint interest in the RKO Proctor's Theatre at Newark, N. J., is not terminated within one year in accordance with the provisions of this paragraph, such joint interest may continue, provided that one of the joint owners shall have the sole management of the theatre and the other shall exercise no control of any kind over the theatre, except to receive fixed payments during the balance of the agreements, which shall not be determined by the net earnings of the theatre.

[fol. 206-R] As to the remainder of the theatres above listed, including all other of such listed theatres located in New York City, the RKO exhibitor-defendants shall terminate such relation by a sale or other disposition of the interest of RKO therein, which may be either (i) to a co-owner or co-owners; or (ii) to a party not a defendant and not owned or controlled by or affiliated with a defendant in this cause.

B. In the event that the RKO exhibitor-defendants shall, pursuant to the provisions of section III-A-9-(a), acquire the interest of their co-owners in all the theatres now owned, leased, or operated by Trenton-New Brunswick Theatres Company in Trenton, New Jersey, the RKO exhibitor-defendants shall dispose of all of their interest in one first-run theatre in Trenton. The RKO exhibitor-defendants shall effect such disposition within one year from the date of their acquisition of such theatres, and shall effectuate this provision by a sale to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein.

C. Within one year of the date hereof, the RKO exhibitor-defendants shall dispose of all their interest in two of the theatres now operated by them on first-run in the central business district of Cincinnati, Ohio. The RKO exhibitor-defendants shall effectuate this provision by a sale to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein.

D. For the purpose of any application or applications for approval of any proposed acquisition, the plaintiff and the RKO exhibitor-defendants hereby waive the necessity of convening a court of three judges pursuant to the expediting certificate filed herein on June 13, 1945; and agree that any application, after reasonable notice of hearing has been given to the Attorney General, may be determined [fol. 206-S] by any judge of the District Court for the Southern District of New York.

E. Upon the dissolution of Radio-Keith-Orpheum Corporation pursuant to the plan of reorganization outlined in the recitals of this decree, and upon the New Theatre Company succeeding to the theatre assets, the RKO defendants

shall cause the New Theatre Company to file with the Court its consent to be bound by sections III, IV, V, VII and VIII of this decree, and thereupon the New Theatre Company shall become and thereafter be in all respects bound by the terms of such sections of this decree.

IV

Commencing one year after the entry of this decree the New Theatre Company and the New Picture Company shall be operated wholly independently of one another and shall have no common directors, officers, agents, or employees. Each of them shall thereafter be enjoined from attempting to control or influence the business or operating policies of the other by any means whatsoever.

V

Howard R. Hughes represents that he now owns approximately 24 percent of the common stock of Radio-Keith-Orpheum Corporation. Within a period of one year from the date hereof, Howard R. Hughes shall either:

A. Dispose of his holdings of the stock of (1) the New Picture Company, or (2) the New Theatre Company, as he may elect, to a purchaser or purchasers who is or are not a defendant herein or owned or controlled by or affiliated with a defendant in this cause; or

B. Deposit with a trustee designated by the court all of his shares of the New Picture Company or the New [fol. 206-T] Theatre Company, as he may elect, under a voting trust agreement whereby the trustee shall possess and be entitled to exercise all the voting rights of such shares, including the right to execute proxies and consents with respect thereto. Such voting trust agreement shall thereafter remain in force until Howard R. Hughes shall have sold his holdings of stock of the New Picture Company or the New Theatre Company to a purchaser or purchasers who is or are not a defendant herein or owned or controlled by or affiliated with a defendant herein, and upon such sale and transfer such voting trust agreement shall automatically terminate. Such trust shall be upon such other terms or conditions, including compensation to the trustee, as shall be prescribed by the Court. During the period of such vot-

ing trust, Howard R. Hughes shall be entitled to receive all dividends and other distributions made on account of the trusteed shares, and proceeds from the sale thereof.

For the purpose of evidencing his consent to be bound by the terms of section V of this decree, Howard R. Hughes individually has consented to its entry and it shall be binding upon his agents and employees.

VI

A. Nothing contained in this decree shall be construed to limit, in any way whatsoever, the right of RKO Radio Pictures, Inc., during the period required for the completion of the reorganization of the RKO defendants, which shall in any event occur within one year of the entry of this judgment, to license or in any way to provide for the exhibition of any or all of the motion pictures which it may distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which Radio-Keith-Orpheum Corporation has or may acquire pursuant to the terms of this decree a proprietary interest of ninety-five percent or more either directly or through subsidiaries.

[fol. 206-U] B. From and after the effective date of the reorganization of the RKO defendants, the provisions of the preceding paragraph shall terminate and be of no effect; and from and after such date all licenses of motion pictures distributed by the New Picture Company or RKO Radio Pictures, Inc. for exhibition in any theatre, regardless of its owner or operator, shall be in all respects subject to the terms of this decree.

VII

A. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under

the control of such defendant, relating to any of the matters contained in this decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for such defendant company may be present. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree.

[fol. 206-V] B. Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

VIII

A. This decree is rendered and entered in lieu of and in substitution for the decree of this court dated December 31, 1946. This decree shall be of no further force and effect and this cause shall be restored to the docket without prejudice to either party if the proposed reorganization of the RKO defendants shall not have been approved by the stockholders of Radio-Keith-Orpheum Corporation within 90 days from the entry of this decree.

B. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this consent decree to apply to the Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Dated:

November 8, 1948.

Augustus N. Hand, United States Circuit Judge;
Henry W. Goddard, United States District Judge;
Alfred E. Coxe, United States District Judge.

[fol. 206-W] We hereby consent to the entry of the foregoing decree:

For the Plaintiff

Herbert A. Bergson
Robert L. Wright
Sigmund Timberg
George H. Davis, Jr.

For the Defendants:

Radio-Keith-Orpheum Corporation,
RKO Radio Pictures, Inc.
RKO Proctor Corporation,
RKO Midwest Corporation, and
Keith-Albee-Orpheum Corporation

By

William J. Donovan
Ralstone R. Irvine
Gordon E. Youngman
Their Attorneys

I hereby consent to the entry of section V of the above decree:
Howard R. Hughes,
By Ralstone R. Irvine
His Attorney

[fol. 207-1] United States District Court for the Southern District of New York

Equity No. 87-273

United States of America, Plaintiff,

against

Paramount Pictures Inc., et al., Defendants

Consent Judgment as to the Paramount Defendants

The plaintiff, United States of America, having filed its Amended and Supplemental Complaint in this action on November 14, 1940; the defendants, Paramount Pictures Inc. and Paramount Film Distributing Corporation, (here-

inafter sometimes referred to as the "Paramount defendants"), having filed their Answers to such Complaint, denying the substantive allegations thereof; the Court after trial having entered a decree herein, dated December 31, 1946, as modified by order entered February 11, 1947; the plaintiff and the Paramount defendants, among others, having appealed from such decree; the Supreme Court of the United States having in part affirmed and in part reversed such decree, and having remanded this cause to this Court for further proceedings in conformity with its opinion dated May 3, 1948; and this Court having, on June 25, 1948, by order made the mandate and decree of the Supreme Court the order and judgment of this Court; and

[fol. 207-2] The Paramount defendants, having represented to the plaintiff and to this Court that they propose, for the purpose of avoiding discrimination against other exhibitors and distributors, promoting substantial independent theatre competition for the Paramount theatres and promoting competition in the distribution and exhibition of films generally, (1) to divorce their domestic exhibition business from their production and distribution business, (2) to divest Paramount Pictures Inc. and the divorced exhibition business of all interest in a ~~minimum~~ of 774 theatres, and (3) to subject themselves and said divorced distribution and exhibition businesses to injunctive provisions, all as hereinafter set forth; and that accordingly they propose to adopt prior to April 19, 1949, a plan of reorganization which will have as its purpose and effect the complete divorcement of the ownership and control of all of the theatre assets of Paramount Pictures Inc. located in the United States from all other assets of the Paramount defendants; that pursuant to such plan two new corporations will be formed, one of which (hereinafter called the New Theatre Company) will own directly or indirectly all of the said theatre assets; and the other of which (hereinafter called the New Picture Company) will own directly or indirectly all of the said other assets; and that thereafter Paramount Pictures Inc. will be dissolved; and that for the purpose of establishing separate ownership and control of the said two new corporations the stock of the New Theatre Company will be delivered to a Trustee who will hold such stock subject to the terms and conditions of this judgment, and certificates of interest representing such

trusteed stock will be issued by the Trustee, and such certificates of interest together with the stock in the New Picture Company will be distributed pro rata by Paramount Pictures Inc. among its stockholders; and Paramount Pictures Inc. having set forth certain understandings with and made certain representations to the Attorney General in a letter filed herewith; and

The Paramount defendants having consented to the [fol. 207-3] entry of this judgment after taking of evidence upon the remand of this cause by the Supreme Court to this Court but without rendition of any decision by this Court upon any of the issues and matters which were to be determined upon said remand, without any findings of fact upon such issues and matters made after said remand, and without admission by the Paramount defendants in respect to any such issue or matter, and the Court having considered the matter.

NOW, THEREFORE, UPON CONSENT OF THE PARTIES HERETO, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

The Complaint is dismissed as to all claims made against the Paramount defendants based upon their acts as producers of motion pictures, whether as individuals or in conjunction with others.

II

A. The Paramount defendants, their officers, agents, servants and employees are each hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.

3. From granting any clearance between theatres not in substantial competition.

[fol. 207-4] 4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this judgment, the burden shall be upon the distributor to sustain the legality thereof.

5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres usually comprising a circuit.

7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty percent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there [fol. 207-5] has been an opportunity afforded to the licensee to inspect the feature.

8. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license

shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others.

B. If a final judgment be entered in this cause against Loew's Incorporated, Twentieth Century-Fox Film Corporation, and Warner Bros. Pictures, Inc., or any of them, which shall prescribe for any of such defendants provisions for licensing the exhibition of feature motion pictures different from those required by this judgment, the Paramount defendants or the New Picture Company or either or the successor or successors of either, may file herein a written notice of election to be relieved from further compliance with such provisions of this judgment and to comply with such provisions of such judgment against said defendants or any of them, and thereupon an order or supplemental judgment shall be entered on the application of such party or parties so electing, which shall subject such party or parties to such provisions of such other judgment and entitle it or them to the benefits of any terms thereof and relieve it or them from further compliance with such provisions of this judgment.

III

A. The defendant Paramount Pictures Inc. (hereinafter in this Section III referred to as "Paramount"), its officers, agents, servants and employees are each hereby enjoined:

1. From performing or enforcing agreements referred to in paragraphs A-5 and A-6 of the foregoing section II hereof to which it may be a party.

[fol. 207-6] 2. From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

3. From making or continuing to perform agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

4. From making or continuing leases of theatres under which it leases any of its theatres to another defendant or

to an independent operating a theatre in the same competitive area in return for a share of the profits.

5. From continuing to own or acquiring any beneficial interest in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant.

(a) The said existing relationships in connection with the theatres in Michigan (excluding Detroit) named in paragraph 9 hereof shall be terminated by November 8, 1949 in accordance with the provisions relating to such theatres set forth in such paragraph 9.

(b) The said existing relationship in connection with the Great Lakes, Hippodrome, Niagara, Seneca, Kenmore, Buffalo, Teck, Bellevue, Kensington, North Park, Lackawanna, and Elmwood Theatres in Greater Buffalo, N. Y., shall be terminated by March 31, 1949, and the said existing relationship in connection with the Roosevelt Theatre, Buffalo, N. Y., shall be terminated by December 31, 1949. Paramount or the New Theatre Company may elect to acquire the interest of the co-owner or co-owners in the five theatres first mentioned in this sub-paragraph (b).

(c) The said existing relationships in connection with the Parkhill Theatre, Yonkers, N. Y., shall be terminated by November 8, 1949 in accordance with the provisions relating to such theatre set forth in paragraph 9 hereof.

[fol. 207-7] 6. From acquiring a beneficial interest in any theatre other than those named in paragraph 9 hereof, provided that:

(a) Until the joint ownerships set forth in paragraph 9 have been completely terminated, as provided for in said paragraph, beneficial interests in theatres may be acquired

(i) As a substantially equivalent replacement for wholly owned theatres* held or acquired in conformity with this judgment which may be lost through physical destruction or conversion to non-theatrical purposes;

* As used herein the phrase "wholly owned theatre" means a theatre in which Paramount or the New Theatre Company, or Paramount or the New Theatre Company together with persons who are solely investors, own a beneficial interest of 95% or more.

(ii) In renewing leases covering any wholly owned theatre held or acquired in conformity with this judgment or in acquiring an additional interest in any such theatre under lease;

(iii) As a substantially equivalent replacement for any wholly owned theatre held or acquired in conformity with this judgment which has been lost through inability to obtain a renewal of the lease thereof upon reasonable terms, if Paramount or the New Theatre Company shall show to the satisfaction of the Court, and the Court shall first find, that such acquisition will not unduly restrain competition;

(iv) In one theatre in Miami, Florida, Chattanooga, Tennessee, Salt Lake City, Utah, and Tampa, Florida, respectively (which theatres Paramount represents it plans to construct upon sites now controlled by it and are to be substantially equivalent replacements for theatres heretofore lost by fire or failure to obtain renewal of leases), if Paramount or the New Theatre Company shall show to the satisfaction of the Court, and the Court shall first find, that such acquisition will [fol. 207-8] not unduly restrain competition.

(b) After termination of the joint ownerships set forth in paragraph 9 hereof, Paramount or the New Theatre Company may acquire a beneficial interest in any theatre only in the situations covered by paragraphs (i) and (ii) of the preceding sub-section (a) unless the New Theatre Company shall show to the satisfaction of the Court, and the Court shall first find, that the acquisition will not unduly restrain competition.

7. From operating, booking or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

8. From making or enforcing any agreement which restricts the right of any other exhibitor to acquire a motion picture theatre.

9. From acquiring or continuing to own in conjunction with any actual or potential independent exhibitor any bene-

ficial interest in motion picture theatres. The theatres in which such ownership now exists are the following:

STATE	CITY	NAME OF THEATRE
ALABAMA	Anniston	Calhoun
		Cameo
		Noble
		Ritz
	Auburn	Tiger
	Bessemer	Grand
		State
	Birmingham	Alabama
		Lyric
		Ritz
		Grand
		Temple
		Drive-In
[fol. 207-9]	Chickasaw	Chickasaw
	Ensley (suburb of Birmingham)	Ensley
		Franklin
	Jasper	Jasper
		New
	Mobile	Crown
		Drive-In
		Empire
		Lyric
		Loop
		Saenger
	Montgomery	Charles
		Clover
		Empire
		Grand
		Paramount
		Strand
	Selma	Walton
		Wilby
	Troy	Enzor
	Tuscaloosa	Bama
		Diamond
		Druid
		Ritz
ARIZONA	Phoenix	Studio
		Drive-In
		Indian Head Drive-In
ARKANSAS	Camden	Rialto
		Ritz
		Strand
	Clarksville	Joy
		Strand
[fol. 207-10]	Conway	Conway
		Grand

STATE	CITY	NAME OF THEATRE
ARKANSAS (Cont.)		
	Dardanelle	Joy
	Fayetteville	Ozark
		Palace
		Royal
		U-Ark
	Fort Smith	Hoyts
		Joie
		New
		Plaza
		Temple
		Uptown
	Helena	Paramount
		Pastime
	Hope	New
		Rialto
		Saenger
	Hot Springs	Central
		Malco
		Paramount
		Victory
	Jonesboro	Liberty
		Palace
		Strand
	Little Rock	Arkansas
		Capitol
		Drive-In
		Heights
		Lee
		New
		Prospect
		Pulaski
		Roxy
		Royal
[fol. 207-11]	McGehee	Ritz
	Morrilton	Rialto
	Newport	Capitol
		Strand
	Pine Bluff	Malco
		Saenger
		Strand
	Russellville	Ritz
	Smackover	Joy
	Stuttgart	Majestic
		Strand
	Van Buren	Bob Burns
		Rio
CALIFORNIA	Hollywood	Paramount

STATE	CITY	NAME OF THEATRE
FLORIDA	Pensacola	Drive-In
		Isis
		Rex
		Saenger
GEORGIA	Athens	Georgia
		Morton
		Palace
		Ritz
		Strand
	Augusta	Imperial
		Miller
		Modjeska
		Rialto
	Barnesville	Ritz
	Brunswick	Bijou
		Ritz
		Roxy
[fol. 207-12]	Buford	Allen
		Colonial
	Columbus	Bradley
		Georgia
		Rialto
		Royal
		Springer
		Village
		Rexview Drive-In
	Elberton	Elbert
	Gainesville	Ritz
		Roxy
		Royal
		State
	Lexington	Lex
	Macon	Capitol
		East Macon
		Rialto
		Grand
		Ritz
	Moultrie	Colquitt
		Moultrie
	St. Simons Island	Casino
	Savannah	Avon
		Beach
		Bijou
		Lucas
		State
		Victory
	Waycross	Carver
		Lyric
		Ritz

STATE	CITY	NAME OF THEATRE
IDAHO	Boise	Ada
		Boise
		Granada
		Pinney
[fol. 207-13]		
ILLINOIS	Chicago	Iris
		McVickers
		North-Center
		United Artists
	Galesburg	Colonial
	LaSalle	LaSalle
		Majestic
	Moline	Illini
		Le Claire
	Oak Park	Lake
		Lamar
	Peru	Peru
		Star
	Quincy	Orpheum
		Washington
	Rockford	Auburn
		Coronado
		Midway
		Palace
		Times
	Rock Island	Fort Armstrong
		Rocket
		Spencer
INDIANA	Gary	Grand
		State
IOWA	Algona	Call
		Iowa
	Boone	Boone
		Princess
		Rialto
	Burlington	Capitol
		Palace
		Zephyr
[fol. 207-14]	Cedar Falls	Regent
	Cedar Rapids	Paramount
		State
	Centerville	Majestic
		Ritz
	Chariton	Ritz
		State
	Charles City	Charles
		Gem
	Clarion	Clarion
	Clear Lake	Lake

STATE	CITY	NAME OF THEATRE
IOWA (Cont.)		
		Park
	Clinton	Capitol
		Rialto
		Strand
	Cresco	Cresco
	Davenport	Capitol
		Esquire
		Garden
	Des Moines	Des Moines
		Garden
		Hiland
		Ingersoll
		Paramount
		Roosevelt
		Uptown
		Strand
		Eastown
		Iowa
		Drive-In
	Eagle Grove	Princess
	Estherville	Grand
	Forest City	Forest
[fol. 207-15]	Fort Dodge	Iowa
		Rialto
		Strand
	Grinnell	Iowa
		Strand
	Iowa City	Englert
		Strand
		Varsity
	Mason City	Cecil
		Palace
		Strand
	New Hampton	Firemens
	Newton	Capitol
		Rialto
	Oelwein	Grand
		Ritz
	Oskaloosa	Mahaska
		Princess
		Rivoli
	Ottumwa	Capitol
		Ottumwa
		Rialto
		Strand
		Zephyr
	Sioux City	Capitol
		Drive-In

STATE	CITY	NAME OF THEATRE
IOWA (Cont.)		
		Hipp
		Hollywood
		Iowa
		State
		Victory
	Waterloo	Paramount
		Strand
[fol. 207–16]		
KENTUCKY	Fulton	Fulton
		Orpheum
		Strand
	Henderson	Kentucky
		Kraver
	Owensboro	Bleich
		Malco
		Seville
		Strand
LOUISIANA	Alexandria	Paramount
		Rex
		Saenger
	Baton Rouge	Drive-In
		Fort
		Louisiana
		Paramount
		Varsity
	Monroe	Capitol
		Delta
		Paramount
	New Orleans	Globe
		Saenger
		Tudor
	Shreveport	Centenary
		Drive-In
		Majestic
		Rex
		Saenger
		Strand
		Venus
		West End
[fol. 207—17]		
MAINE	Auburn	Auburn
	Augusta	Colonial
		Capitol
	Bangor	Bijou
		Opera House
		Park

STATE	CITY	NAME OF THEATRE
MAINE (Cont.)		
	Brunswick	Cumberland
		Pastime
	Gardiner	Opera House
	Hallowell	Rialto
	Lewiston	Empire
		Priscilla
		Strand
	Livermore Falls	Dreamland
	Norway	Rex
	Orono	Strand
	Ramford	Strand
	South Paris	Strand
	Wilton	Wilton
MASSACHUSETTS	Chicopee	Rivoli
	Fitchburg	Fitchburg
	Greenfield	Garden
	Haverhill	Colonial
		Paramount
	Holyoke	Bijou
		Strand
		Victory
	North Adams	Paramount
		Richmond
[fol. 207-18]	Northampton	Calvin
		Plaza
	Palmer	Strand
	Pittsfield	Capitol
		Colonial
		Palace
		Strand
	Springfield	Paramount
		Broadway
	Ware	Casino
	Westfield	Strand
MICHIGAN	Adrian	Croswell
		Family
	Allegan	Regent
	Alpena	Lyric
		Malz
	Ann Arbor	Orpheum
		Michigan
		State
		Whitney
		Wuerth
	Battle Creek	Bijou
		Michigan
		Post

STATE	CITY	NAME OF THEATRE
MICHIGAN (Cont.)		
		Regent
		Strand
	Bay City	Bay
		Center
		Regent
		Westown
	Benton Harbor	Lake
		Liberty
[fol. 207-19]	Big Rapids	Big Rapids
	Cadillac	Center
		Lyric
	Detroit	Alger
		Royal
		United Artist
	East Lansing	State
	Flint	Capitol
		Della
		Garden
		Palace
		Regent
		Roxy
		State
		Strand
	Grand Haven	Grand
		Robinhood
	Grand Rapids	Center
		Eastown
		Royal
		Four Star
		Kent
		Majestic
		Our
		Wealthy
	Greenville	Gibson
		Silver
	Hillsdale	Dawn
		Hill
	Holland	Center
		Colonial
		Holland
[fol. 207-20]	Ionia	Center
		Ionia
	Jackson	Capitol
		Majestic
		Michigan
		Regent
		Rex
	Kalamazoo	Capitol

STATE	CITY	NAME OF THEATRE
MICHIGAN (Cont.)		
		Fuller
		State
		Michigan
		Orpheum
		Uptown
	Lansing	Capitol
		Gladmer
		Lansing
		Michigan
		Nortown
		Southown
	Ludington.	Center
		Lyric
	Mainstee	Lyric
		Ramsdell
		Vogue
	Monroe	Family
		Monroe
	Muskegon	Michigan
		Regent
		State
	Niles	Ready
		Riviera
[fol. 207-21]	Owosso	Capitol
		Center
		Strand
	Pontiac	Eagle
		Oakland
		Orpheum
		Rialto
		State
		Strand
	Port Huron	Desmond
		Family
		Majestic
	Saginaw	Center
		Franklin
		Mecca
		Michigan
		Strand
		Temple
		Wolverine
	St. Joseph	Caldwell
	South Haven	Michigan
		Model
	Sturgis	Roxy
		Strand

STATE	CITY	NAME OF THEATRE
MICHIGAN (Cont.)		
	Three Rivers	Rialto
		Riviera
	Traverse City	Michigan
		Trabav
	Willow Run	Center
	Ypsilanti	Martha Washington
		Wuerth
[fol. 207-22]		
MINNESOTA	Fairmont	Nicholas
		Strand
MISSISSIPPI	Biloxi	Buck
		Saenger
	Clarksdale	Delta
		Paramount
	Columbus	Dixie
		Princess
		Varsity
	Greenville	Delta
		Paramount
	Greenwood	Le Flore
		Paramount
	Gulfport	Gulf
		Paramount
	Hattiesburg	Buck
		Lomo
		Rose
		Saenger
	Jackson	Century
		Drive-In
		Majestic
		Paramount
		Pix
	Meridian	Alberta
		Strand
		Temple
	Natchez	Baker Grand
		Ritz
	Tupelo	Lyric
		Tupelo
[fol. 207-23]	Vicksburg	Alamo
		Saenger
		Strand
	West Point	Ritz
		Star
	Winona	Winona

STATE	CITY	NAME OF THEATRE
NEBRASKA	Fairbury	Bonham
		Majestic
	Falls City	Oil City
		Rivoli
	Grand Island	Capitol
		Empress
		Grand
	Hasting	Rivoli
		Strand
	Omaha	Omaha
		Orpheum
		Paramount
		Drive-In
NEW HAMPSHIRE	Berlin	Albert
		Princess
		Strand
	Concord	Capitol
		Star
	Portsmouth	Colonial
		Olympia
NEW JERSEY	Newark	Adams
		Paramount
	Paterson	U. S.

[fol. 207-24]

STATE	CITY	NAME OF THEATRE
NEW MEXICO	Albuquerque	Chief
		Kimo
		Lobo
		Mission
		Rio
		Sunshine
		Yucca
		Drive-In
		Mesa
NEW YORK	Fulton	Avon
		State
	New York City	Rivoli
	Owego	Tioga
	Rochester	Capitol
		Paramount
		Regent
	Waverly	Amuzu
		Capitol
	Yonkers	Parkhill
NORTH CAROLINA	Asheboro	Carolina
	Asheville	Imperial
		Isis
		Palace

STATE	CITY	NAME OF THEATRE
N. CAROLINA (Cont.)		
		Paramount
		Plaza
		State
		Commitment to build new theatre
	Burlington	Alamance
		Carolina
		Paramount
[fol. 207-25]	Canton	Colonial
		Strand
	Chapel Hill	Carolina
		Village
	Concord	Cabarrus
		Paramount
	Durham	Carolina
		Center
		Rialto
	Fayetteville	Broadway
		Carolina
		Colony
	Gastonia	Lyric
		Temple
	Goldsboro	Carolina
		Paramount
		Wayne
	Greensboro	Carolina
		Imperial
		National
	Greenville	Colony
		Pitt
		State
	Hendersonville	Carolina
		State
	Hickory	Center
		Park
	High Point	Broadhurst
		Center
		Paramount
		Rialto
	Lenoir	Center
		State
[fol. 207-26]	Lexington	Carolina
		Granada
	Lumberton	Carolina
		Pastime
	Monroe	Center
		State
	Mt. Airy	Center

STATE	CITY	NAME OF THEATRE
N. CAROLINA (Cont.)		
	Raleigh	Ambassador
		Capitol
		Palace
		State
		Varsity
	Rockingham	Little
		Richmond
	Rocky Mount	Carolina
		Center
	Salisbury	Capitol
		State
		Victory
	Wilmington	Bailey
		Bijou
		Carolina
		Royal
		Ritz
	Wilson	Carolina
		Ritz
		Wilson
	Winston-Salem	Carolina
		State
		Colonial
		Forsyth
[fol. 207-27]		
NORTH DAKOTA	Jamestown	Star
PENNSYLVANIA	Aliquippa	Rialto
		State
		Strand
		Temple
	Ambridge	State
	Bloomsburg	Capitol
		Columbia
	Butler	Capitol
		Penn
	Carlisle	Comerford
		Strand
	Danville	Capitol
	Dickson City	Rex
	Dunmore	Orient
	Duryea	Pastime
	Forest City	Freedman
	Forty Fort	Forty Fort
		Institute
	Hawley	Ritz
	Hazleton	Capitol
		Feeley

STATE	CITY	NAME OF THEATRE
PENNSYLVANIA (Cont.)		
		Grand
	Honesdale	Lyric
	Jersey Shore	Victoria
	Kingston	Kingston
	Lebanon	Capitol
		Colonial
		Jackson
[fol. 207-28]	Luzerne	Luzerne
	Mauch Chunk	Capitol
	Miners Mills	Crystal
	Northumberland	Savoy
	Old Forge	Holland
	Olyphant	Olyphant
		Granada
	Parsons	Parsons
	Pittston	American
		Roman
	Plymouth	Shawnee
	Pottsville	Capitol
		Hippodrome
		Hollywood
	Sayre	Sayre
	Scranton	Bell
		Capitol
		Comerford
		Family
		Globe
		Rialto
		Riviera
		Roosevelt
		State
		Strand
		Temple
		Westside
		Pinebrook
	Shenandoah	Strand
	Sunbury	Rialto
		Strand
	Towanda	Keystone
[fol. 207-29]	Wilkes-Barre	Capitol
		Comerford
		Hart
		Orpheum
		Penn
		Sterling
		Strand
		Temple
		Irving

STATE	CITY	NAME OF THEATRE
PENNSYLVANIA (Cont.)		
	Williamsport	Capitol
		Keystone
SOUTH CAROLINA	Anderson	Drive-In
	Columbia	Drive-In
	Darlington	Liberty
		Darlington
	Florence	Carolina
		Colonial
	Greenville	Drive-In
	Greenwood	Carolina
		Ritz
		State
SOUTH DAKOTA	Madison	Lyric
		State
TENNESSEE	Elizabethton	Bonnie Kate
		Ritz
	Jackson	Paramount
		State
		Met
		Drive-In
	Kingsport	State
	Memphis	Malco
		Strand

[fol. 207-30]

STATE	CITY	NAME OF THEATRE
TEXAS	Abilene	Majestic
		Palace
		Paramount
		Queen
	Amarillo	Capitol
		Paramount
		Rialto
		State
		Esquire
	Anahuac	Rig
	Arlington	Aggie
		Texan
	Arp	Rex
	Austin	Paramount
		Queen
		State
		Austin
		Capitol
		Texas
		Varsity

STATE	CITY	NAME OF THEATRE
TEXAS (Cont.)		
	Baytown	Arcadia
		Bay
	Beaumont	Gem
		Jefferson
		Lamar
		Liberty
		Star
		Tivoli
		Peoples
		Circle Drive-In
	Breckenridge	National
		Palace
	Brownsville	Capitol
		Queen
[fol. 207-31]	Brownwood	Bowie
		Lyric
		Gem
	Channelview	Sanja
	Conroe	Crighton
		Liberty
	Corsicana	Grand
		Ideal
		Palace
		Rio
	Dallas	Capitol
		Dalsec
		Fair
		Forest
		Majestic
		Melba
		Palace
		Rialto
		Tower
		White
		Circle
		Inwood
		Knox
		Lakewood
		Lawn
		Esquire
		Varsity
		Village
		Wilshire
		Telenews
		Drive-In-Buckner Bvd
		Drive-In-Northwest H'way
	Denison	Rialto
		Rio

STATE	CITY	NAME OF THEATRE
TEXAS (Cont.)		
		State
[fol. 207-32]	Denton	Dreamland
		Palace
		Texas
	Donna	Plaza
	Eagle Lake	Cole
	Eastland	Majestic
		Lyric
	El Paso	Ellanay
		Palace
		Pershing
		Plaza
		Texas Grand
		Wigwam
	Fort Worth	Bowie
		Gateway
		Hollywood
		Majestic
		Palace
		Parkway
		River Oaks
		Worth
		Tower
		Varsity
		Bowie Drive-In
		Belknap Drive-In
		7th St. Theatre
	Galveston	Key
		Martini
		Queen
		State
		Tremont
		Broadway
	Gladewater	Cozy
		Gregg
		Palace
[fol. 207-33)	Goose Creek	~~Palace~~
		Texan
	Greenville	Colonial
		Rialto
		Texan
	Groves	Lyric
	Hallettsville	Cole
	Harlingen	Arcadia
		Grande
		Rialto
		Strand
	Henderson	Palace

STATE	CITY	NAME OF THEATRE
TEXAS (Cont.)		
		Strand
	Houston	Alabama
		Almeda
		Bluebonnet
		Eastwood
		Kirby
		Majestic
		Metropolitan
		North Main
		River Oak
		Tower
		Village
		Wayside
		Yale
		Santa Rosa
		Broadway
		Garden Oaks
		Fulton
		Shepard Drive-In
		So. Main Drive-In
		Winkler Drive-In
[fol. 207-34]	Jacksonville	Jackson
		Palace
		Rialto
	Kilgore	Crim
		Strand
		Texan
	La Porte	Port
	Lontview	Arlyne
		Rembert
		Rita
	Lufkin	Lynn
		Pines
		Texan
	McAllen	Azteca
		Palace
		Queen
		El Rey
	Marshall	Lynn
		Paramount
	Mercedes	Rex
		Rio
		State
	Nacogdoches	Rita
		Stonefort
		Texan
	Nederland	Rio
	Needville	Cole

STATE	CITY	NAME OF THEATRE
TEXAS (Cont.)		
	Orange	Bengal
		Gem
		Royal
		Strand
[fol. 207-35]	Overton	Gem
		Strand
	Paris	Grand
		Main
		North Star
		Plaza
		Rex
	Pelly	Alamo
	Pharr	Drive-In
	Port Arthur	Majestic
		Pearce
		Peoples
		Port
		Sabine
		Strand
		Surf Drive-In
	Port Neches	Lynn
		Neches
	Richmond	Lamar
	Rosenberg	Cole
		State
	Rusk	Cherokee
	San Antonio	Aztec
		Empire
		Majestic
		Texas
		Broadway
		Laurel
		State
		Sunset
		Woodlawn
	San Marcos	Hayes
		Palace
		Texas
[fol. 207-36]	Silsbee	Palace
		Pines
	Temple	Arcadia
		Bell
		Gem
		Rio
		Texas
	Texarkana	Drive-In
		Paramount
		Strand
		Texan

STATE	CITY	NAME OF THEATRE
TEXAS (Cont.)		
	Tyler	Arcadia
		Liberty
		Majestic
		Tyler
	Vernon	Pictorium
		Vernon
	Waco	Orpheum
		25th Street
		Texas
		Waco
		Circle Drive-In
	Wallis	Cole
	Weslaco	Gem
		Ritz
	Wichita Falls	Majestic
		State
		Strand
		Wichita
	Yoakum	Grand
		Ritz
[fol. 207-37]		
UTAH	Ogden	Colonial
		Orpheum
		Paramount
VERMONT	Brattleboro	Paramount
	Burlington	Flynn
		Majestic
	Montpelier	Capitol
VIRGINIA	Cape Charles	Radium
	Charlottesville	Jefferson
		Lafayette
		Paramount
		University
	Danville	Capitol
		Dan
		Rialto
	Exmore	Cameo
	Hampton	Langley
		Rex
	Hilton Village	Village
	Lynchburg	Isis
		Paramount
		Trenton
	Newport News	James
		Paramount
	Phoebus	Lee

STATE	CITY	NAME OF THEATRE
WEST VIRGINIA	Bluefield	Granada State
	Wheeling	Rex
WISCONSIN	LaCrosse	Fifth Avenue Hollywood

[fol. 207-38] The existing joint ownership in the above enumerated theatres shall be terminated as to all such theatres within three years from the date of entry of this judgment, and as to at least one-third of such theatres within one year from such date, and as to at least two-thirds of such theatres within two years from such date, in accordance with the following provisions:

(a) Paramount or the New Theatre Company shall terminate the existing joint ownerships in each of said theatres by a sale or other outright transfer of the entire interest of Paramount or the New Theatre Company therein either (i) to a co-owner or co-owners, or (ii) to a third person who is not a defendant herein and not owned or controlled by or affiliated with a defendant herein, except as otherwise provided in sub-paragraph (b) below.

(b) In the event that Paramount's interest in any joint ownership shall not be terminated as provided in sub-paragraph (a), Paramount or the New Theatre Company may acquire the interest of such co-owner or co-owners, after first negotiating for such acquisition with such co-owner or co-owners, in not to exceed the following theatres from the above list in each of the following communities:

State	*City*	*Theatres*
Alabama	Anniston	Any two of the theatres above listed, only one of which may be a first run theatre.*

* The term "first run theatre", as used in this judgment (except where otherwise specifically stated), shall be understood to mean not necessarily the best theatre of the joint ownership or of Paramount in the particular city, but a theatre which in size, location and physical appointments is suitable for operation upon a regular policy of first run exhibition of the better pictures released by the eight distributor defendants.

[fol. 207-39]

State	*City*	*Theatres*
Alabama (*Cont.*)		
	Auburn	Tiger Theatre.
	Bessemer Ensley Jasper Selma	Any one of the theatres above listed in each of these cities.
	Birmingham	Any four of the theatres above listed, only two of which may be first run theatres.
	Chickasaw	Chickasaw Theatre.
	Mobile	Any four of the theatres above listed, only one of which may be a first run theatre.
	Montgomery	Any three of the theatres above listed, only one of which may be a first run theatre.
	Troy	Enzor Theatre.
	Tuscaloosa	Any three of the theatres above listed, only one of which may be a first run theatre.
Arizona	Phoenix	Either one of the two drive-in theatres above listed.
Arkansas	Camden Jonesboro	Any one of the theatres above listed in each of these cities.

[fol. 207-40]

	Fayetteville Fort Smith Hot Springs	Any two of the theatres above listed (only one of which may be a first run theatre) in each of these cities.
	Little Rock	Any two of the theatres above listed.
Florida	Pensacola	Any three of the theatres above listed, only one of which may be a first run theatre.
Georgia	Athens Augusta Brunswick Columbus Gainesville Macon Waycross	Any one of the theatres above listed in each of these cities.

State	*City*	*Theatres*
Georgia (*Cont.*)		
	Savannah	Any two of the theatres above listed, only one of which may be a first run theatre.
Idaho	Boise	Any two of the theatres above listed, only one of which may be a first run theatre.
Illinois	LaSalle Moline Oak Park Peru Quincy	Any one of the theatres above listed in each of these cities.
[fol. 207-41]	Rock Island Rockford	Any two of the theatres above listed (only one of which may be a first run theatre) in each of these cities.
Indiana	Gary	Any one of the theatres above listed.
Iowa	Cedar Rapids	Any one of the theatres above listed.
	Davenport	Any two of the theatres above listed, only one of which may be a first run theatre.
	Des Moines	Any six of the theatres above listed, only two of which may be first run theatres.
	Sioux City Waterloo	Any one of the theatres above listed in each of these cities.
Kentucky	Fulton	Any one of the theatres above listed.
	Owensboro	Any two of the theatres above listed, only one of which may be a first run theatre.
Louisiana	Alexandria Monroe	Any two of the theatres above listed (only one of which may be a first run theatre) in each of these cities.
[fol. 207-42]		
	Baton Rouge New Orleans	Any one of the theatres above listed in each of these cities.

State	*City*	*Theatres*
Louisiana (*Cont.*)	Shreveport	Any four of the theatres above listed, only one of which may be a first run theatre.
Maine	Bangor Lewiston	Any one of the theatres above listed in each of these cities.
Massachusetts	Haverhill Holyoke North Adams Northampton Pittsfield Springfield	Any one of the theatres above listed in each of these cities.
Michigan	Ann Arbor Battle Creek Flint Grand Rapids Kalamazoo Lansing Pontiac Saginaw	Any one of the theatres above listed in each of these cities.
[fol. 207-43]	Detroit	The Royal Theatre, provided however, that promptly after the acquisition by Paramount or the New Theatre Company of the interest of the co-owner therein, Paramount or the New Theatre Company shall lease the said theatre to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein and which lease shall contain no rental provisions based upon a share of the profits of such theatre or any other theatre, and provided further that Paramount or the New Theatre Company shall sell such theatre property as soon as practicable and in any event before the expiration of such lease.
Minnesota	Fairmont	Any one of the theatres above listed.
Mississippi	Biloxi Clarksdale Greenville	Any one of the theatres above listed in each of these cities.

State	City	Theatres
Mississippi (Cont.)		
	Greenwood Gulfport Natchez Hattiesburg Meridian Vicksburg	Any two of the theatres above listed (only one of which may be a first run theatre) in each of these cities.
	Jackson	Any three of the theatres above listed, only one of which may be a first run theatre.
	Winona	Winona Theatre.
[fol. 207–44] Nebraska	Fairbury Falls City Hastings	Any one of the theatres above listed in each of these cities.
	Grand Island	Any two of the theatres above listed, only one of which may be a first run theatre.
	Omaha	Any two of the theatres above listed.
New Hampshire	Concord Portsmouth	Any one of the theatres above listed in each of these cities.
New Jersey	Newark	Any one of the theatres above listed.
New Mexico	Albuquerque	Any one of the theatres above listed.
New York	Fulton	Any one of the theatres above listed.
	New York City	Rivoli Theatre.
	Rochester	Any two of the theatres above listed, only one of which may be a first run theatre.
No. Carolina	Asheboro	Carolina Theatre.
	Asheville	Any four of the theatres above listed (and which list shall be deemed to include the theatre in this city, when built, as to which there is a commitment to build), provided that such four theatres

State	City	Theatres
No. Carolina (*Cont.*) [fol. 207–45]		shall not include, and Paramount or the New Theatre Company shall concurrently dispose of the interest of Paramount in one first run theatre in this city.
	Burlington Durham Fayetteville Goldsboro Greensboro Greenville High Point Salisbury Wilmington Wilson Winston-Salem	Any two of the theatres above listed (only one of which may be a first run theatre) in each of these cities.
	Canton Chapel Hill Concord Gastonia Hendersonville Hickory Lumberton Monroe Rockingham Rocky Mount	Any one of the theatres above listed in each of these cities.
	Raleigh	Any three of the theatres above listed, only one of which may be a first run theatre.
[fol. 207–46] Pennsylvania	Aliquippa Bloomsburg Butler Carlisle Hazelton Lebanon Pittston Pottsville Shenandoah Sunbury Wilkes-Barre Williamsport	Any one of the theatres above listed in each of these cities.
	Scranton	Any two of the theatres above listed.

State	*City*	*Theatres*
So. Carolina	Anderson Columbia Greenville Greenwood	The drive in theatre in each of these cities. Any two of the theatres above listed; only one of which may be a first run theatre.
So. Dakota	Madison	Any one of the theatres above listed.
Tennessee	Elizabethton Jackson Memphis	Any one of the theatres above listed in each of these cities.
	Kingsport	State Theatre.
[fol. 207-47] Texas	Abilene Beaumont Breckenridge Brownwood Brownsville Corsicana Denison Denton Galveston Harlingen McAllen Orange Paris Port Arthur Temple Tyler Vernon Wichita Falls	Any one of the theatres above listed in each of these cities.
	Austin	Any three of the theatres above listed, only one of which may be a first run theatre.
	Amarillo El Paso Texarkana Waco	Any two of the theatres above listed (only one of which may be a first run theatre) in each of these cities.
	Dallas	Any seven of the theatres above listed, only two of which may be first run theatres.
	Fort Worth	Any four of the theatres above listed, only one of which may be a first run theatre.

State	City	Theatres
Texas (Cont.)		
[fol. 207-48]	Houston	Any seven of the theatres above listed, only one of which may be a first run theatre.
	San Antonio	Any four of the theatres above listed, only one of which may be a first run theatre.
Utah	Ogden	Any two of the theatres above listed, only one of which may be a first run theatre.
Virginia	Charlottesville Lynchburg Newport News	Any one of the theatres above listed in each of these cities.
Wisconsin	La Crosse	Any one of the theatres above listed.

(c) With respect to any jointly owned theatre as to which Paramount's interest shall not be sold or otherwise transferred in accordance with the provisions of sub-paragraph (a) or as to which the interest of the co-owner or co-owners shall not be acquired by Paramount or the New Theatre Company under the provisions of sub-paragraph (b) of this paragraph 9, Paramount or the New Theatre Company may negotiate with a third person who is not a defendant herein and not owned or controlled by or affiliated with a defendant herein, for a sale of the entire joint interest in such theatre to such third person and may negotiate for the acquisition thereof and thereafter acquire the interest of its co-owner or co-owners for the sole purpose of effectuating such a sale, provided that such sale shall be consummated not later than six months following such acquisition and shall create substantial motion picture theatre oper-
[fol. 207-49] ating competition in any community in which Paramount or the New Theatre Company shall retain any theatre.

10. From voting its stock in any of the corporations through which said joint ownerships are held for the purpose of preventing corporate action which will effectuate dissolution of such joint ownerships upon reasonable terms in accordance with paragraph 9 hereof.

B. Paramount owns a beneficial interest in the following theatres, and the only other beneficial interests in such theatres are those of persons who are solely investors: Houlton and Temple Theatres, Houlton, Me.; Empire, Park and Strand Theatres, Rockland, Me.; Chateau, Empress, Lawler and Time Theatres, Rochester, Minn.; Avon, Broadway, State and Winona Theatres, Winona, Minn.; and Grand, Paramount and Strand Theatres, Rutland, Vt.

1. As to not exceed the following theatres from the above list, Paramount or the New Theatre Company may elect to acquire the interest of the co-owner or co-owners therein, or to sell or otherwise transfer the interest of Paramount therein in accordance with the provisions of sub-paragraph (a) or (c) of paragraph 9 of sub-section A of this Section III, or to continue the same in the existing joint ownership applicable thereto:

Any one of the theatres above listed in Houlton, Me.

Any two of the theatres above listed in Rockland, Me., only one of which may be a first run theatre.

Any two of the theatres above listed in Rochester, Minn., only one of which may be a first run theatre.

Any two of the theatres above listed in Winona, Minn., only one of which may be a first run theatre.

Any two of the theatres above listed in Rutland, Vt., only one of which may be a first run theatre.

2. The remainder of the theatres above listed in the first [fol. 207-50] paragraph of this sub-section B shall be disposed of by Paramount or the New Theatre Company, or by the existing joint ownership if continued as above provided for in this sub-section B, to a person not a defendant herein and not owned or controlled or affiliated with a defendant herein, in accordance with the provisions of sub-paragraph (a) or (c) of said paragraph 9.

3. The provisions set forth in paragraphs 1 and 2 of this sub-section B shall be effectuated within two years from the date hereof and in such a manner as to create substantial motion picture theatre operating competition in any community in which Paramount or the New Theatre Company, or the joint ownership if continued as above provided, shall retain any theatres.

C. 1. For the purpose of creating substantial motion picture theatre operating competition in the communities hereinafter listed, Paramount or the New Theatre Company shall dispose of all of the interest of Paramount in at least one half of the following motion picture theatres within one year from the date hereof, and in all of the following motion picture theatres within two years from the date hereof, and each such disposition shall be to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein:

One theatre in each of the following cities in Florida: Bartow and Bradenton.

Two theatres in Clearwater, Fla.*

One first run theatre in Daytona Beach, Fla.

One theatre in Deland, Fla.

Two theatres in Fort Lauderdale, Fla., one of which shall be a first run theatre.

[fol. 207-51] The Ritz Theatre in Fort Myers, Fla.

One first run theatre in Gainesville, Fla.

One theatre in Hollywood, Fla., which theatre shall not be the theatre located in the Hollywood Hotel.

Three theatres in Jacksonville, Fla., one of which shall be a first run theatre.

Two theatres in Lakeland, Fla., one of which shall be a first run theatre.

One theatre in Lake Worth, Fla.

One first run theatre in Ocala, Fla.

Two theatres in Orlando, Fla., one of which shall be a first run theatre.

One theatre in Plant City, Fla.

One theatre in St. Augustine, Fla.

Four theatres in St. Petersburg, Fla., of which one shall be a first run theatre.

One theatre in Sanford, Fla.

One theatre in Sarasota, Fla.

One first run theatre in West Palm Beach, Fla.

One theatre in Winter Park, Fla.

One first run theatre in Atlanta, Ga.

One theatre in Preston, Idaho.

One first run theatre in Bloomington, Ill.

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*One of these two theatres shall be the Belleview, which is located in a hotel.

One first run theatre in Elgin, Ill.
One first run theatre in Kankakee, Ill.
One theatre in Pekin, Ill.
One first run theatre in Peoria, Ill.
One first run theatre in South Bend, Ind.
One theatre in Danville, Ky.
One theatre in Bath, Maine.
The Regent Theatre and the Annex Theatre, Detroit, Mich.
One theatre in Austin, Minn.
One first run theatre in Mankato, Minn.
One first run theatre in Minneapolis, Minn.
One first run theatre in St. Cloud, Minn.
One first run theatre in St. Paul, Minn.
[fol. 207-52] One theatre in Peekskill, N. Y.
One first run theatre in Poughkeepsie, N. Y.
One first run theatre in Charlotte, N. C.
One first run theatre in Fargo, N. D.
One first run theatre in Minot, N. D.
One theatre in Bellevue, Ohio.
One first run theatre in each of the following cities: Fremont, Ohio, Hamilton, Ohio, and Middetown, Ohio.
One first run theatre in each of the following cities: Columbia, S. C. and Spartanburg, S. C.
One theatre in Sumter, S. C.
One first run theatre in Aberdeen, S. D.
One first run theatre in Huron, S. D.
One first run theatre in Watertown, S. D.
One first run theatre in Chattanooga, Tenn.
Two first run theatres in Knoxville, Tenn.
One theatre in Logan, Utah.
One theatre in Provo, Utah.
One theatre in Barre, Vt.
One theatre in Eau Claire, Wis.

As to not exceed twelve of the foregoing theatres, in the event that Paramount or the New Theatre Company is unable to sell on reasonable terms, Paramount or the New Theatre Company, upon application to the Court in any such case and with the approval of the Court first obtained, may lease or sublease the same to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein; on condition, however, that no such lease or

sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the lease or any other theatre; and further on condition that Paramount or the New Theatre Company shall thereafter sell its interest in any such theatre so leased or subleased as soon thereafter as it can do so upon reasonable terms and in any event prior to the expiration of such lease or sublease.

[fol. 207-53] 2. If the existing decree entered in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of Florence B. Bigelow, et al., against RKO Radio Pictures Inc., et al., shall be modified or vacated, and if, after such modification or vacating, the competitive situation in outlying Chicago (outlying Chicago for the purposes hereof including the entire city of Chicago except the downtown portion of Chicago and also including Berwyn, Blue Island, Chicago Heights, Evanston, La Grange and Oak Park) shall be less favorable for the independent exhibitors in outlying Chicago (an independent exhibitor for the purposes hereof meaning an exhibitor who is not a defendant herein or owned or controlled by or affiliated with a defendant herein), and if such less favorable competitive situation shall be shown by the Attorney General to the satisfaction of the Court in which this consent judgment is entered, then such Court may order such relief against, or with respect to, the theatres of Paramount or the New Theatre Company located in outlying Chicago as it may deem just or proper in order to create proper competitive conditions in outlying Chicago or in any particular section thereof.

3. As to the cities hereinafter mentioned in this paragraph 3, Paramount or the New Theatre Company (in lieu of disposing of the interest of Paramount in any motion picture theatres in such cities) shall commence within six months from the date hereof, and shall thereafter, until in any case the Attorney General otherwise consents in writing or, if such consent cannot be obtained, the Court otherwise orders, operate (a) only one first run theatre*,

*The term "first run theatre," as used in this paragraph 3, shall be understood to mean a theatre with a policy of playing features in the particular city on a first run basis, other than second choice or western features or features released by distributors other than the defendants herein.

[fol. 207-54] as distinguished from a theatre or theatres operating other than first run, in each of the following cities: Tucson, Ariz.; Aurora, Ill.; Alton, Ill.; Danville, Ill.; Decatur, Ill.; Galesburg, Ill.; Kewanee, Ill.; Joliet, Ill.; Waukegan, Ill.; Grand Forks, N. D.; Anderson, S. C.; Greenville, S. C., and Mitchell, S. D., and (b) only two first run theatres in San Francisco, Cal., in Duluth, Minn., and in Sioux Falls, S. D.

D. If Paramount so elects, the "theatre assets of Paramount located in the United States" and to be transferred to the New Theatre Company as provided in this judgment may be construed as not to include the Paramount Theatre property in New York, N. Y. Such property, if not so included, shall be regarded as being included in the other assets of the Paramount defendants to be transferred to the New Picture Company as provided in this judgment, provided, however, that (a) the theatre portion of such property may not be operated by the New Picture Company and may not be leased by Paramount or the New Picture Company to a defendant herein or a person owned or controlled by or affiliated with a defendant herein but may be leased by Paramount or the New Picture Company to the New Theatre Company (or a subsidiary of the New Theatre Company) under a lease which contains no rental provisions based upon a share of the profits of the theatre so leased or any other theatre, and (b) such property shall be sold by the New Picture Company within five years from the date hereof to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein.

IV

A. Within a period not to exceed one year after the entry of this judgment the New Theatre Company and the New Picture Company shall be operated wholly independently of one another and shall have no common directors, officers, agents or employees. Each of them shall thereafter be enjoined from attempting to control or influence [fol. 207-55] the business or operating policies of the other by any means whatsoever. The foregoing provisions shall not be construed to prohibit the directors, officers, agents or employees of Paramount Pictures Inc. who become affiliated with either one of said new companies and who receive stock

in such companies, either in exchange for stock presently held by them in Paramount Pictures Inc. or as the result of the exercise of option privileges now owned by them or who receive certificates of interest in the New Theatre Company issued by the Trustee as herein provided, from so acquiring stock or certificates of interest in the company with which they do not become affiliated and holding such stock or certificates of interest for a sufficient period of time to permit them to sell such stock or certificates of interest to persons not affiliated with the seller's company without undue hardship to the seller, provided that in any event such sales shall be made within a period not to exceed one year from the effective date of the reorganization of Paramount Pictures Inc.

B. The by-laws of the New Theatre Company shall provide that a majority of its Board of Directors shall consist of individuals who have not had any prior connection with the defendant Paramount Pictures Inc., or the New Picture Company, as directors, officers, agents or employees. The names of the candidates for election or designation to the original Board of Directors of the New Theatre Company shall be submitted to and approved by the Attorney General and the Court.

C. The by-laws of the New Picture Company shall provide that all replacements of members of the Board of Directors on and after the date of reorganization of Paramount Pictures Inc. shall be filled by individuals who have not had any prior connection with the defendant Paramount Pictures Inc. or the New Theatre Company as directors, officers, agents or employees, until such time as a majority of the Board of Directors of the New Picture Company shall [fol. 207-56] consist of such individuals and such Board shall thereafter continue to have such a majority.

V

A. The defendant, Paramount Pictures Inc., shall present to its stockholders, prior to April 19, 1949, a plan of reorganization to effect a divorcement of its theatre assets located in the United States from its other assets. Such plan shall provide that one of the new companies, viz., the New Theatre Company, shall receive the said theatre assets, and the other, viz. the New Picture Company, shall receive the said other assets, and the two new companies shall each

issue to Paramount Pictures Inc. in exchange for the assets so received a number of shares of their common capital stock equal to one-half the aggregate amount of common capital stock of Paramount Pictures Inc. then outstanding. Paramount Pictures Inc. shall be dissolved and (a) shall distribute the stock of the New Picture Company pro rata among its own stockholders, and (b) shall on behalf of its stockholders transfer the shares of the New Theatre Company to, and register the same in the name of Bank of New York and Fifth Avenue Bank, a corporation organized and existing under the laws of New York, as Trustee, hereinafter called the Trustee, to hold in accordance with the terms and conditions hereinafter set forth.

B. Upon the organization of the New Picture Company, Paramount Pictures Inc. shall cause the New Picture Company to file with the Court its consent to be bound by, and receive the benefits of, the terms of sections II, IV, VI (in so far as section VI is applicable to the New Picture Company), VIII and IX of this judgment, and thereafter the New Picture Company shall be in all respects bound by, and receive the benefits of, the terms of such sections of this judgment.

C. Upon the organization of the New Theatre Company, Paramount Pictures Inc. shall cause the New Theatre Company [fol. 207-57] to file with the Court its consent to be bound by, and receive the benefits of, the terms of sections III, IV, VI, VIII and IX of this judgment, and thereafter the New Theatre Company shall be in all respects bound by, and receive the benefits of, the terms of such sections of this judgment.

VI

A. The Trustee shall declare its submission to the jurisdiction of this Court for all purposes of this cause, and shall enter its appearance herein by counsel, and is made a party hereto; and said Trustee is hereby appointed to receive and hold, as the custodian of this Court, subject to the provisions of this judgment and to the further orders and judgment of the Court herein, the shares of capital stock of the New Theatre Company which shall be transferred to it as above provided for the purpose of assuring effective separation of the ownership and control of the New Picture

Company from the ownership and control of the New Theatre Company.

B. The Trustee shall execute and issue certificates of interest representing the shares transferred to it hereunder and shall deliver them to the defendant, Paramount Pictures Inc., which shall distribute such certificates of interest, together with the shares of stock of the New Picture Company, pro rata among its own stockholders. All such certificates shall be registered by the Trustee in the names of the recipients.

C. The certificates of interest issued hereunder may be in such denominations as the Trustee shall elect. The certificates of interest shall be executed on behalf of the Trustee by such officer or officers of the Trustee as it may authorize, and such certificates of interest may be countersigned by a trust company in the City of New York as registrar.

D. The Trustee shall, so long as any of the shares of the capital stock of the New Theatre Company shall be held by [fol. 207-58] the Trustee, collect and receive any and all cash dividend declared by the New Theatre Company appertaining to the shares so held, which shall be payable to the Trustee as the registered stockholder entitled to such dividends by the terms of the declaration thereof. Such dividends shall be held by the Trustee as trustee for the respective registered holders of certificates of interest to be paid to or upon their order as hereinafter provided.

The Trustee shall as soon as practicable after receipt of each cash dividend pay to each registered holder of a certificate of interest an amount which is equal to 50% of the amount of such dividend applicable to the shares of stock represented by such certificate of interest, in order to permit the holder thereof to apply such amount toward payment of income taxes on the income deemed to have been constructively received by him by virtue of the payment of such dividend to the Trustee; provided, however, that unless at least 51% of the shares of stock of the New Theatre Company have been released by the Trustee and registered in names other than that of the Trustee within two years from the date of creation of the Trust, the Trustee shall retain 100% of the dividends thereafter paid to it by the New Theatre Company and shall thereafter pay over no part of such dividends to certificate holders as provided above.

E. At any time upon the surrender to the Trustee at its office in the City of New York of any outstanding certificates of interest by the registered holder thereof, or his transferee, and the filing with the Trustee of a duly executed affidavit, substantially in the forms annexed as "FORM A-1 through 6", the Trustee shall as soon as practicable, unless it has reason to believe that the facts are not as represented in the affidavit, deliver to such applicant stock certificates for the number of shares of capital stock of the New Theatre Company represented by the surrendered certificates of interest. The term "applicant" as hereinafter [fol. 207-59] used shall refer to a registered holder of a certificate of interest, or his transferee, who may surrender such certificate of interest to the Trustee in accordance with this or any of the succeeding paragraphs.

If at any time the number of shares of capital stock of the New Theatre Company held by the Trustee have been reduced by the conversion of certificates of interest in accordance with the preceding paragraph to 33⅓% or less of the total number of shares of capital stock of the New Theatre Company outstanding, the Court may, upon application of the New Theatre Company, declare the trust terminated and all shares released therefrom if the Court shall first find that upon such termination there will be no working control of or controlling influence over the New Theatre Company by a person or persons affiliated with the New Picture Company, and no working control of or controlling influence over the New Picture Company by a person or persons affiliated with the New Theatre Company.

In the event of an order of the Court terminating the Trust in accordance with the preceding paragraph, it shall be the duty of the New Theatre Company promptly to notify the holders of certificates of interest; and thereafter, upon the surrender to the Trustee at its office in the City of New York of any outstanding certificate of interest by an applicant whose shares have been released by such direction or order, the Trustee shall as soon as practicable deliver to the applicant stock certificates for the number of shares of capital stock of the New Theatre Company represented by the surrendered certificate of interest.

When certificates of interest are surrendered to the Trustee for transfer and the circumstances are not such as to entitle the applicant to the issuance of a certificate for

shares of capital stock of the New Theatre Company, the Trustee shall issue a new certificate of interest in the name specified by the applicant.

[fol. 207-60] F. Upon the delivery by the Trustee of a certificate for shares of capital stock of the New Theatre Company against the surrender of an outstanding certificate of interest or upon the transfer of a certificate of interest into the name of a new registered holder, the Trustee shall pay in cash, to or upon the order of the person in whose name the surrendered certificate (or the certificate delivered for transfer) is registered, the amount of all cash dividends received by the Trustee appertaining to the number of shares represented by such certificate during the period in which such person was the registered holder of such certificate, less the amount theretofore released and paid by it in respect of the shares represented by such certificate, but without interest thereon, as well as the amount of any dividends in respect of such shares which have been declared by the New Theatre Company payable on a date subsequent to the surrender (or delivery for transfer) of the certificate of interest to holders of record on a date prior to such surrender (or delivery for transfer).

G. The Trustee shall at any time after the end of four years from the date of the creation of the Trust, if the Attorney General so requests, and in any event not later than five years from such date, mail to each of the registered holders of remaining certificates of interest, addressed to him at the last known post office address appearing on the books of the Trustee, a notice stating that the shares of capital stock of the New Theatre Company remaining in the name of the Trustee as of a date not less than ninety days after the mailing of such notice, will be sold and the net proceeds distributed among such holders in proportion to the number of shares represented by their certificates; and as promptly as practicable after the date specified in such notice, the Trustee shall sell, in such manner as the Court shall direct, the remaining shares in the Trust to persons who are not owners of stock in the New Picture Company and upon distribution of the net proceeds (together with any [fol. 207-61] dividends in the hands of the Trustee to which the holders of the remaining certificates of interest may be entitled) the Trust shall terminate.

H. If it shall appear to the Court or the Attorney General at the time that the Trust is proposed to be terminated, as provided in subsections E or G of this section VI, that a working control of or controlling influence over the affairs of either of the two new companies is being exerted by or on behalf of a person or persons affiliated with the other such company, adn the Court finds that such a working control or controlling influence exists, the Court may take such action as may be necessary and appropriate in respect of such persons to ensure the termination of such working control or controlling influence, including, but not limited to, if such persons are stockholders of either company, the suspension of their right to vote or to receive dividends upon their stock, and, if such persons are officers, agents, directors or employees of either company, their removal from such positions.

I. Any shares which may be issued by the New Theatre Company during the existence of the Trust provided for herein, shall likewise be transferred to the Trustee and be subject to the terms of this judgment unless the person to whom such shares are proposed to be issued files an affidavit in substantially the forms annexed marked "FORM A-1 through 6" with the New Theatre Company.

J. To aid the Court in the enforcement of his judgment, appropriate provisions shall be made in the charters or the by-laws of the New Picture Company and the New Theatre Company requiring that so long as the Trust provided for herein is in existence any person to whom a dividend is paid (other than the Trustee) shall have first disclosed the identity of the beneficial owner of the shares in respect of which the dividend is payable, and that, in the [fol. 207-62] event that one of such companies shall not have paid a dividend within thirty days of a dividend payment by the other, any person (other than the Trustee) to whom the dividend is paid shall also have first disclosed the extent of any beneficial ownership such person and the benficial owner may then have in the other company. Before the Trust is terminated both of said companies will procure from all of the stockholders then of record and the transfer agents whatever additional data as to beneficial ownership may be necessary to determine accurately as of the date of proposed termination the names of all beneficial owners of stock and the amounts respectively held by them.

K. The two new companies shall make arrangements with their transfer agents for the submission to each of them, at any desired intervals, of all such information as will enable such companies to determine the name of every person who is a holder of shares (or certificates of interest) in both companies, and the number of shares (including shares represented by certificates of interest) in each company standing in his name, and such information will be made available to the Attorney General.

L. All certificates of interest surrendered pursuant to conversions or exchanges effected under this section VI shall forthwith be cancelled by the Trustee and shall not be reissued.

Within 60 days after the conversion of certificates of interest as herein provided shall have commenced, and at monthly intervals thereafter, the Trustee shall file with the New Theatre Company a report showing the aggregate amounts of certificates of interest transferred and converted since the last previous report of the Trustee and the names of all persons to whom shares of stock of the New Theatre Company shall have been issued pursuant to every such conversion and to whom certificates of interest shall have been transferred; and from time to time upon the request [fol. 207-63] of the Attorney General the Trustee shall furnish him with any information which he may require relating to the carrying out of this judgment.

M. The Trustee shall exercise full voting rights on the shares of capital stock of the New Theatre Company registered in its name, having due regard for the interests of the holders of the certificates of interest, in accordance with the terms, conditions and purposes of this judgment.

N. The Trustee shall keep at an office maintained by it in the City of New York books for the transfer of the certificates of interest issued hereunder. The Trustee shall furnish to the New Theatre Company as and when requested lists containing the names and addresses of the holders of certificates of interest and the respective amounts held by them.

The Trustee may to enable it to effect the purposes of this judgment (so far as consistent with the provisions hereof), decide all matters of detail in respect of the form of certificates of interest and the arrangements necessary for their issuance and transfer.

The Trustee shall be accountable for its action hereunder

only in proceedings in this cause, and any order of the Court entered upon notice to the Trustee and to the New Theatre Company shall be full protection to the Trustee for any action which it may take pursuant thereto, and any action so taken by the Trustee shall be binding upon all holders of certificates of interest. The Trustee shall not be liable to anyone for deferring to take any action until instructed by the Court.

O. In case any certificate of interest issued hereunder shall become mutilated or be destroyed, the Trustee, in its discretion, may issue a new certificate of interest of the same denomination in lieu of such mutilated or destroyed certificate. In case of loss or destruction, the applicant for a [fol. 207-64] substituted certificate of interest shall furnish to the Trustee evidence of such loss or destruction to the satisfaction of the Trustee in its discretion and such reasonable indemnity as the Trustee shall require.

P. The Trustee shall be entitled to reasonable compensation, the amount thereof to be approved by the Court, for all services by it hereunder, which compensation, together with counsel fees and other expenses incurred hereunder and approved by the Court, and all stamp and other taxes imposed by law upon the transfer of the shares of the New Theatre Company from the Trustee to the holders of certificates of interest, shall be paid by the New Theatre Company.

Q. The Trustee shall be subject to removal by the Court in its discretion and, in the event of such removal, or in the event of the resignation of such Trustee, the Court may appoint a successor Trustee. The term "Trustee" as herein used shall be deemed to refer to any such successor Trustee.

VII

A. Nothing contained in this judgment shall be construed to limit, in any way whatsoever, the right of the Paramount defendants, during the period required for the completion of the reorganization of the Paramount defendants, which shall in any event occur within one year of the entry of this judgment, to license or in any way to provide for the exhibition of any or all of the motion pictures which it may distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which Paramount Pictures Inc. has or may acquire pur-

suant to the terms of this judgment a proprietary interest of ninety-five per cent or more either directly or through subsidiaries.

[fol. 207-65] B. From and after the effective date of the reorganization of the Paramount defendants, the provision of the preceding paragraph shall terminate and be of no effect; and from and after such date all licenses of motion pictures distributed by the New Picture Company or Paramount Pictures Inc. for exhibition in any theatre, regardless of its owner or operator, shall be in all respects subject to the terms of this judgment.

VIII

A. For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this judgment, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment.

[fol 207-66] B. Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department

of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

IX

A. This judgment is rendered and entered in lieu of and in substitution for the decree of this Court dated December 31, 1946. This judgment shall be of no further force and effect and this cause shall be restored to the docket without prejudice to either party if the proposed reorganization of the Paramount defendants shall not have been approved by the stockholders of Paramount Pictures Inc. prior to April 19, 1949.

B. For the purpose of any application under this judgment, the plaintiff and the defendant, Paramount Pictures Inc., hereby waive the necessity of convening a court of three judges pursuant to the expediting certificate filed herein on June 13, 1945; and agree that any application may be determined by any judge sitting in the United States District Court for the Southern District of New York.

Any application by either party under this judgment shall be upon reasonable notice to the other.

C. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this consent judgment to apply to the Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification or carrying out of the same (including applications for alternative relief to accomplish termination of any joint ownership in a manner consistent with the purposes of this judgment in situations where none of the methods of terminating any such joint ownership provided in paragraph [fol. 207-67] 9 of section III of this judgment has effected such termination, due to the unreasonableness of Paramount or a co-owner), for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Dated: March 3, 1949.

Augustus N. Hand, United States Circuit Judge; Henry W. Goddard, United States District Judge; Alfred C. Coxe, United States District Judge.

We hereby consent to the entry of the foregoing decree.
For the Plaintiff

Tom C. Clarke, Attorney General; Herbert A. Bergson, Asst. Attorney General; Robert L. Wright, Sigmund Timberg, Spec. Assts. to Atty. Gen.

For the Defendants

Paramount Pictures Inc. and Paramount Film Distributing Corporation, Simpson, Thacher & Bartlett, By Albert C. Bickford, A Member of the Firm. Their Attorneys.

[fol. 207-68] "FORM A-1"

(Individual Form)

State of ....}
County of ....} ss:

....being duly sworn deposes and says:

That deponent is surrendering a certificate or certificates of interest registered in the name of .... numbered ...., issued by ...., as Trustee, under a judgment entered on the .... day of .... 1949 by a statutory three judge District Court in the suit of United States of America vs. Paramount Pictures Inc. and others; that he is the beneficial owner of .... shares of capital stock of .... (herein referred to as the New Theatre Company) represented by said certificate or certificates; and that he makes this affidavit for the purpose of procuring the issuance in the name of deponent of a certificate or certificates for such shares of capital stock of the New Theatre Company held by said Trustee in exchange for said certificate or certificates of interest. That deponent does not own any beneficial interest in any shares of the capital stock of .... (herein referred to as the New Picture Company) a corporation of the State of .... whether registered in deponent's name on the books of the New Picture Company or registered in the name or names of others. That deponent in making this application is not acting either directly or indirectly for or on behalf of any stockholder

of the New Picture Company, or in concert, agreement or understanding with any other individual, firm or corpo-
[fol. 207-69] ration for the control of the New Theatre Company in the interest of any individual, firm or corporation affiliated with the New Picture Company, but in his own behalf in good faith.

Sworn to before me
this ....day
of ...., 19......

[fol. 207-70] "FORM A-2"

(Form for Joint Tenants and Tenants in Common)

State of ....}
County of ....} ss:

.... being duly sworn deposes and says:

That deponent is one of .... joint tenants (or tenants in common), all of such tenants being herein referred to as the "Applicants"; that he is, pursuant to authority duly conferred on him, surrendering on behalf of Applicants a certificate or certificates of interest registered in the name of ...., numbered ...., issued by .... as Trustee, under a judgment entered on the .... day of .... 1949 by a statutory three judge District Court in the suit of United States of America vs. Paramount Pictures Inc. and others; that the Applicants are the beneficial owners of shares of capital stock of .... (herein referred to as the New Theatre Company) represented by said certificate or certificates; and that deponent makes this affidavit for the purpose of procuring the issuance in the name of the Applicants of a certificate or certificates for such shares of capital stock of the New Theatre Company held by said Trustee in exchange for said certificate or certificates of interest. That none of the Applicants owns any beneficial interest in any shares of the capital stock of .... (herein referred to as the New Picture Company) a corporation of the State of .... whether registered in his own name on the books of said New Picture Company or registered in the name or names

of others. That Applicants in making this application are [fol. 207-71] not acting either directly or indirectly for or on behalf of any stockholder of the New Picture Company, or in concert, agreement or understanding with any other individual, firm or corporation for the control of the New Theatre Company in the interest of any individual, firm or corporation affiliated with the New Picture Company, but in their own behalf in good faith.

Sworn to before me
this .... day
of ...., 19......

[fol. 207-72] "FORM A-3"

(Partnership Form)

State of ....}
County of ....} ss:

.... being duly sworn deposes and says:

That deponent is a member of the partnership of ...., the members of which are .... (hereinafter called the "Applicants"); that he is, pursuant to authority duly conferred on him, surrendering on behalf of Applicants a certificate or certificates of interest registered in the name of ...., numbered .... issued by ...., as Trustee, under a judgment entered on the .... day of ....1949 by a statutory three judge District Court in the suit of United States of America vs. Paramount Pictures Inc. and others; that Applicants are the beneficial owners of .... shares of capital stock of........................ (herein referred to as the New Theatre Company) represented by said certificate or certificates; and that deponent makes this affidavit for the purpose of procuring the issuance in the name of the Applicants of a certificate or certificates for such shares of capital stock of the New Theatre Company held by said Trustee in exchange for said certificate or certificates of interest. That none of the Applicants owns any beneficial interest in any shares of the capital stock of ....(herein re-

ferred to as the New Picture Company) a corporation of the State of ...., whether registered in [fol. 207-73] his own name on the books of said New Picture Company or registered in the name or names of others. That Applicants in making this application are not acting either directly or indirectly for or on behalf of any stockholder of the New Picture Company, or in concert, agreement or understanding with any other individual, firm or corporation for the control of the New Theatre Company in the interest of any individual, firm or corporation affiliated with the New Picture Company, but in their own behalf in good faith.

Sworn to before me
this .... day
of ...., 19......

[fol. 207-74] "FORM A-4"

(Corporate Form)

State of ....
County of .... } ss:

...., being duly sworn deposes and says:

That deponent is .... of the .... a corporation (or a joint stock company), hereinafter called the "Applicant"; that he is, pursuant to authority duly conferred on him, surrendering on behalf of Applicant a certificate or certificates of interest registered in the name of ...., numbered ...., issued by .... as Trustee, under a judgment entered on the ....day of........ 1949 by a statutory three judge District Court in the suit of United States of America vs. Paramount Pictures Inc. and others; that Applicant is the beneficial owner of .... shares of capital stock of ....(hereinafter referred to as the New Theatre Company) represented by said certificate or certificates; and that deponent makes this affidavit for the purpose of procuring the issuance in the name of the Applicant of a certificate or certificates for such shares of capital stock of the New Theatre Company held by said Trustee in exchange for said certificate or certificates of interest. That Applicant does not own any beneficial interest

in any shares of the capital stock of .... (herein referred to as the New Picture Company) a corporation of the State of ...., whether registered in the Applicant's own name on the books of the New Picture Company or registered in the name or names of others. That the Applicant in making this application is not acting either directly or indirectly for or on behalf of any [fol. 207-75] stockholder of the New Picture Company or in concert, agreement or understanding with any other individual, firm or corporation for the control of the New Theatre Company in the interest of any individual, firm or corporation affiliated with the New Picture Company, but in its own behalf in good faith.

Sworn to before me
this .... day
of ...., 19......

[fol. 207-76] "FORM A-5"

(Trustee Form)

State of .... }
County of .... } ss:

.... being duly sworn deposes and says:

That deponent is trustee under the .... trust, that on behalf of such trust estate he is surrendering a certificate or certificates of interest registered in the name of ...., numbered ...., issued by ...., as Trustee, under a judgment entered on the .... day of .... 1949 by a statutory three judge District Court in the suit of United States of America vs. Paramount Pictures Inc. and others; that such trust estate is the beneficial owner of .... shares of capital stock of .... (herein referred to as the New Theatre Company) represented by said certificate or certificates; and that deponent makes this affidavit for the purpose of procuring the issuance in the name of the trust estate of a certificate or certificates for such shares of capital stock of the New Theatre Company held by said Trustee in exchange for said certificate or certificates of interest. That such trust estate does not own any beneficial interest in

any shares of the capital stock of .... (herein referred to as the New Picture Company) a corporation of the State of ...., whether registered in the name of such trust estate on the books of said New Picture Company or registered in the name or names of others. That deponent in making this application is not acting either directly or indirectly for or on behalf of any stockholder of the New Picture Company, or in concert, agreement or [fol. 207-77] understanding with any other individual, firm or corporation for the control of the New Theatre Company in the interest of any individual, firm or corporation affiliated with the New Picture Company, but in behalf of such trust estate in good faith.

Sworn to before me
this.............................. day
of ...., 19......

[fol. 207-78] "FORM A-6"

(Form for Executors and Administrators)

State of ....)
County of ....) ss:

.... being duly sworn deposes and says:

That deponent is executor (or administrator) of the estate of ....; that on behalf of said estate he is surrendering a certificate or certificates of interest registered in the name of ...., numbered ....issued by ...., as Trustee, under a judgment entered on the ....day of ....1949 by a statutory three judge District Court in the suit of United States of America vs. Paramount Pictures Inc. and others; that said estate is the beneficial owner of ....shares of capital stock of ....(herein referred to as the New Theatre Company) represented by said certificate or certificates; and that deponent makes this affidavit for the purpose of procuring the issuance in the name of .... of a certificate or certificates for such shares of capital stock of the New Theatre Company held by said Trustee in exchange for said certificate or certificates of interest. That said estate does not own any beneficial interest in any shares of the

capital stock of .... (herein referred to as the New Picture Company) a corporation of the State of ...., whether registered in the name of said estate on the books of said New Picture Company or registered in the name or names of others. That deponent in making this application is not acting either directly or indirectly for or on behalf of any stockholder of the New Picture Company, or in concert, agreement or understand-
[fol. 207-79] ing with any other individual, firm or corporation for the control of the New Theatre Company in the interest of any individual, firm or corporation affiliated with the New Picture Company, but in behalf of said estate in good faith.

Sworn to before me
this .... day
of ...., 19......

[fol. 207-80] Paramount Pictures Inc.

Times Square, New York 18

BRyant 9-8700 Cable Address Famfilm

February 24, 1949.

The Attorney General, Department of Justice,
Washington, D. C.

Dear Sirs:

Re: U. S. v. Paramount Pictures Inc., et al.

As per our discussions with you in connection with the consent judgment as to the Paramount defendants, the entry of which judgment is being consented to by you and by us, we set forth below our understanding of and representations as to certain matters.

(1) In connection with paragraph 2 of subsection A of section III of such judgment:

With reference to the pooling agreement in Biddeford, Maine involving the City Theatre of Louis B. Lausier and the Central Theatre of New England Theatres, Inc. (a 100% subsidiary of Paramount), New England Theatres, Inc. has brought suit against Mr.

Lausier in the District Court of the United States for the District of Maine to terminate such pooling agreement.

With reference to the pooling agreement in Jamestown, N. D. involving the State Theatre of L. J. Ludwig, the Star Theatre of L. J. Ludwig and American Amusement Company (a 100% subsidiary of Paramount), and the Grand Theatre of American Amusement Company, American Amusement Company has brought suit against Mr. Ludwig in the District Court of the United States for the District of Minnesota to terminate such pooling agreement.

Paramount or the New Theatre Company shall cause each of the two suits above referred to to be deligently prosecuted to final judgment. During the pendency of and until the entry of a final judgment in favor of the plaintiff in each such suit, the continuation of the pooling agreement which is the subject of such suit shall not be deemed to be in violation of the said paragraph 2, nor shall it be deemed a violation of the said paragraph 2 if it shall finally be adjudged in such suit that the plaintiff is not entitled to terminate such pooling agreement.

With reference to the pooling agreement in Newburgh, N. Y. involving the Cameo and Ritz Theatres of Dora Levy and the Broadway Theatre of Paramount Pictures Theatres Corporation (a 100% subsidiary of Paramount), such agreement has been terminated by Paramount Theatres Corporation, effective May 31, 1949. The continuation of such pooling agreement until May 31, 1949 shall not be deemed to be in violation of the said Paragraph 2.

[fol. 207-81] (2) Referring to paragraph 6 of subsection A of section III of such judgment, the new theatre which our subsidiary, Florida Coastal Theatres, Inc., has an obligation to build in West Palm Beach, Fla. pursuant to an existing lease, and construction of which commenced on or about February 1, 1949 (and which theatre is being built in accordance with such obligation) is to be regarded as a wholly owned theatre to be held by Paramount or the New Theatre Company in conformity with such judgment.

(3) Referring to paragraph 7 of subsection A of section

III of such judgment, certain of our wholly owned theatres are operated and booked by the same parties who operate and book the theatres which we have in joint ownerships in the same general area. Pending the termination of the said joint ownerships as prescribed in such section III, the continuation of the foregoing arrangements is not to be considered as a violation of such paragraph 7.

(4) Referring to the four theatres in Shreveport, La., as to which Paramount or the New Theatre Company may elect to acquire the interest of the co-owner or co-owners therein as provided in sub-paragraph (b) of paragraph 9 of subsection A of section III of such judgment, at the present time a 50% interest in such four theatres is held by investors (Mrs. Rebecca M. Frank and Miss Marie Schuler). It is understood that Paramount or the New Theatre Company may, in lieu of acquiring the said 50% interest of such investors in such four theatres, hold, acquire and retain a 50% interest in such four theatres provided that such investors, or other investors, own the remaining 50% interest.

(5) Referring to the three theatres in Jackson, Miss., as to which Paramount or the New Theatre Company may elect to acquire the interest of the co-owner or co-owners therein as provided in sub-paragraph (b) of paragraph 9 of subsection A of section III of such judgment, at the present time a 50% interest in such three theatres is held by the Kennington interests who are investors. It is understood that Paramount or the New Theatre Company may, in lieu of acquiring the said 50% interest of such investors in such three theatres, hold, acquire and retain a 50% interest in such three theatres provided that such investors, or other investors, own the remaining 50% interest.

(6) We refer to certain of the theatres in Alabama, North Carolina, South Carolina and Tennessee as to which Paramount or the New Theatre Company may elect to acquire the interest of the co-owner or co-owners therein as provided in sub-paragraph (b) of paragraph 9 of subsection A of section III of such judgment. We believe that certain of the co-owners (other than officers or employees) of these theatres are investors, as distinguished from actual or potential independent exhibitors, and it is understood that,

if Paramount or the New Theatre Company satisfies you that such is the fact and if Paramount or the New Theatre Company acquires the interest of the other co-owners in some or all of such theatres, Paramount or the New Theatre Company need not acquire the interest of the investors in such theatres.

(7) In paragraph 1 of subsection C of section III of such judgment it is provided that Paramount or the New Theatre Company must dispose of one first run theatre in Chatta- [fol. 207-82] nooga, Tenn. It is understood that Paramount or the New Theatre Company need not dispose of such theatre in Chattanooga if there shall be an independent first run theatre in such city in substantial competition with the theatres of Paramount or the New Theatre Company within eighteen months from the date of such decree and if Paramount or the New Theatre Company shall forego its plans for the construction of a new theatre in such city and notify you in writing that it waives its right to make the application in such connection referred to in paragraph 6 of subsection A of Section III of such judgment.

(8) None of the theatres to be disposed of under subsection B, and paragraph 1 of subsection C, of section III of such judgment shall be a theatre catering exclusively to colored patronage.

(9) Referring to the last paragraph in paragraph 1 of subsection C of Section III of such judgment, it is understood that you have consented to a sublease by Paramount or the New Theatre Company of the Annex Theatre, Detroit, Mich., subject to the conditions set forth in such paragraph, and that it will be unnecessary for Paramount or the New Theatre Company to obtain the approval of the Court before making such sublease.

(10) We have stated to you that we own a beneficial interest, in connection with investors only, in the following theatres:

Paramount Theatre, Ft. Fairfield, Me.
Brockton Theatre, Brockton, Mass.
Liberty and Majestic Theatres, Johnson City, Tenn.

Since there is only one theatre in Ft. Fairfield, Me. and since there is existing substantial independent motion picture theatre competition in Brockton, Mass. and Johnson City, Tenn., we are permitted to continue the existing joint

ownership with investors in each of the above listed cities and no reference has been made in such judgment to any of these situations.

(11) Referring to the list of theatres which we own in conjunction with exhibitors, as set forth in paragraph 9 of subsection A of section III of such judgment, we hereby certify to you that based upon all information furnished to us to date, this list is complete and accurate as of this date.

(12) We hereby confirm that on December 30, 1948, we terminated the existing joint ownership, and sold to our co-owner our entire interest, in the following forty-five theatres:

State	*City*	*Name of Theatre*
Massachusetts	Arlington	Capitol
	Greater Boston	Allston
		Bellevue
		Circle
		Colonial
		Community
		Dudley
		Egleston
		Esquire
		Egyptian
		Fairmont
		Franklin Park
		Humboldt
		Hyde Park
		Jamaica
		Liberty
		Marlboro
		Modern
		Morton St.
		Newton
		Oriental
		Plaza
		Regent
		Rialto
		Rivoli
		Roxy
		State
		Warren St.

[fol. 207-83]

State	City	Name of Theatre
Mass. (Cont'd)	Greater Boston (Cont'd)	Washington St.
		Wollaston
	Falmouth	Elizabeth
		Falmouth
	Hull	Bayside
	Somerville	Ball Square
		Capitol
	Taunton	Central
		State
	Waltham	Park
		Central Square
		Embassy
		Waldorf
		Waltham
Maine	Portland	Maine
		State
Connecticut	New London	Capitol

(13) We hereby state to you that, based upon the most accurate information available to us there is now substantial independent first run competition in all communities over 25,000 population where theatres are wholly owned by Paramount, except those communities named in subsections [fol. 207-84] B and C of section III of such judgment and except New Haven, Connecticut, and Hammond, Indiana, where Paramount operates one theatre and Loew's and/or Warner's operate two or more theatres, and except South Norwalk and Norwalk, Connecticut, where Paramount operates one downtown theatre and one suburban theatre and Warner's operates two downtown theatres, and except Phoenix, Arizona, where Fox operates two theatres and Paramount under such judgment will dispose of its interest in a joint ownership having a downtown theatre. In all communities under 25,000 population where theatres are wholly owned by Paramount and where there are two or more theatres there are now one or more independent theatres in operation, except those communities named in subsections B and C of section III of such judgment, and except Biddeford, Maine, Newburgh, New York, and Jamestown, North Dakota where such operation will occur upon

termination of the pooling agreements referred to in (1) of this letter.

(14) With reference to the time limitation set forth in subsection A of section IV of such judgment, the following directors of Paramount Pictures Inc. may receive certificates of interest in the New Theatre Company which (if they become directors of the New Picture Company) they may not be able to dispose of within the period allowed without undue hardship, due to the large size of their holdings (to wit, presently in excess of 5,000 shares) and unpredictability of market conditions. It is understood that in such event they may, upon a showing of due diligence and upon a further showing as to the length of time necessary to complete disposal of their holdings without undue hardship, receive an extension of time for that purpose:

Maurice Newton
Stanton Griffis
A. Conger Goodyear

It is further understood that Barney Balaban, who is now an officer and director of Paramount Pictures Inc. and who will become an officer and director of the New Picture Company and who now holds certain convertible notes of Paramount Pictures Inc. will, prior to the expiration of the trust set forth in such judgment, either dispose of or exercise his option to convert such notes into stock of Paramount Pictures Inc. or dispose of or exercise warrants entitling him to purchase stock of the New Picture Company and the New Theatre Company, and that if the options or warrants are exercised by him, he will dispose of his holdings so acquired in the New Theatre Company as soon thereafter as such sale may be made without undue hardship to him and, in any event, prior to the expiration of the trust set forth in this judgment. It is further understood that such convertible notes will be paid in full not later than three months after the effective date of the reorganization.

(15) It is understood that the term "theatre assets of Paramount located in the United States" and to be transferred to the New Theatre Company as provided in such judgment includes the television station operated in Chicago, Ill., by our subsidiary, Balaban & Katz Corp.

[fol. 207-85] (16) We hereby confirm that we will forth-

with send, air mail special delivery, to all persons who are co-owners in our existing theatre joint ownership, a copy of such judgment, and advise them at the same time that such judgment will be presented to the three judge expediting court in the Southern District of New York on the date fixed by such court for such purpose.

It is understood that this letter will be incorporated by reference in such judgment and that you will thereby indicate that the contents hereof are in accordance with your understanding.

Very truly yours,
PARAMOUNT PICTURES Inc.
by Austin C. Keough, (Sgd.)
Vice President

[fol. 208] UNITED STATES DISTRICT COURT

[Title Omitted]

Stenographer's Minutes

New York, January 4, 1951

[fol. 208-1] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E. 87-273

United States of America, Petitioner,

vs.

Loew's, Incorporated, et al., Defendants.

Before:

Hon. Augustus N. Hand, C.J.,
Hon. Henry W. Goddard, D.J., and
Hon. Alfred C. Coxe, D.J.
New York, January 4, 1951; 4:00 o'clock p.m.

Appearances:

For the Government:

Irving H. Saypol, Esq., United States Attorney, by Philip Marcus, Esq., and Maurice Silverman, Esq., Special Assistants to the Attorney General; and Harold Lasser, Esq., Special Attorney.

[fol. 208-2] Robert W. Perkins, Esq., Attorney for Defendants Warner Bros. Pictures, Inc., et al.; Joseph M. Proskauer, Esq., Robert W. Perkins, Esq., J. Alvin Van Bergh, Esq., Howard Levinson, Esq., and Harold Berkowitz, Esq., of Counsel.

B. F. Shipman, Esq., Attorney for Intervenor Sutphen Estates, Inc.

Stanleigh P. Friedman, Esq., Attorney for Warner Bros., et al.

Mr. Marcus: May it please the Court, at this time I should like to present to your Honors a proposed consent judgment as to Warner Bros. which has been signed by the parties.

This judgment, your Honors, is a lineal descendant of the judgment entered by this Court on February 8th of last year. It does contain certain provisions not included in that judgment, and it is complete in itself, but because it is complete in itself the preamble recites that it is entered in lieu of the previous judgment entered by this Court with respect to the Warner defendants. It is not intended by this recital to affect in any way the findings of fact and conclusions of law with respect to the violations found by this Court to exist in this case.

[fol. 208-3] It has a section devoted to trade practice provisions which is very similar to those contained in the previous judgment entered by this Court. The sole exception is with respect to a provision dealing with franchises.

That provision, as your Honors may recall, excepts from the prohibition against franchises, franchises made to independent exhibitors in opposition to affiliated circuits. This extends that exception to circuits created out of the divorcements provided for by this judgment and the other judgments entered in this case.

It has a section devoted to prohibitions with respect to the exhibition interests. Those prohibitions, in turn, are very similar to those contained in the Paramount judgment. The major one deals with the restrictions upon the acquisition of additional theatres by the Warner defendants.

Judge Goddard: What section is that?

Mr. Marcus: That is Section 4, and subparagraph 6 is the one I am referring to. That is on page 5 of this printed document.

In brief, that paragraph prohibits the Warner defendants from adding to its theatres it now holds during the period provided for for divorcement and divestiture. It does allow them, however, to replace theatres under certain [fol. 208-4] conditions which they may have lost during this period. Thereafter, that is, after the divorcement and divestiture has been completed, they may acquire additional theatres upon application to this Court and upon a showing that such acquisition will not unduly restrict competition.

The divestiture provisions start on page 7, and are rather extensive.

In order to provide competition in various towns in which Warner has theatres, the divestiture of some 55 theatres is provided for in this judgment. In addition, what we might call conditional divestiture, is provided for in a number of other localities. That pertains for the most part to situations where competition has newly come into the picture, so now that it was thought that in order to insure such competition for a period of time, namely, five years, it would be provided that in the event that competition did not survive, Warner would have to divest themselves of a theatre in that particular locality.

In certain other towns it is provided that if theatres that are independent theatres find themselves unable to procure films and are unreasonably denied an opportunity to procure films in competition with Warner, then Warner, [fol. 208-5] during this period, will have the option of either divesting a theatre or of taking product limitation.

Judge Hand: Of taking what?

Mr. Marcus: A product limitation; that is, confining themselves to 60 per cent of the product of the major distributors.

Those conditions appertain to those towns merely for a period of five years. To that extent they do add something to the previous judgments that have been entered in this court against RKO and Fox and Paramount.

Judge Hand: You mean they are an additional burden, really?

Mr. Marcus: They are an additional burden, yes, your Honor. It is provided that those previously held are required——

Judge Hand: It all depends, of course, on knowledge of ~~the details here that we could not have without——~~

Mr. Marcus: Yes.

Judge Hand: —without knowledge of the negotiation that you worked out with the Warners.

Mr. Marcus: Well, these negotiations with Warner had by the Government extended over a considerable period of months. The parties went into each town and to the extent possible we attempted to compile such data with [fol. 208-6] respect to each of those towns and each of the theatres concerned, and it was on the basis of that data that these divestitures and conditional divestitures formulas were worked out.

Judge Goddard: Well, is it inconsistent with provisions of other judgments?

Mr. Marcus: No, they are not; but there are additional ones, they are not found in the other judgments.

Mr. Proskauer: That is, they are additional burdens on us.

Mr. Marcus: That is right.

[fol. 208-7] Judge Hand: Warner has burdens along certain lines and benefits along certain lines. That has been practically traded out, hasn't it?

Mr. Marcus: Yes. With respect to these conditional divestitures, they were towns where we have taken the position that something must be done, and as far as we were concerned it would have to have been either divestiture or something along those lines. That was a matter of controversy between us and the Warner people. It was a matter which if the parties had not been willing to compromise their differences it would have to be decided by this Court whether in these particular towns actual divestiture should be had.

Judge Hand: Forbidding them to go into the forbidden fruit and everything else.

I don't imagine Judge Proskauer has been wholly sacrificed by this arrangement.

Mr. Proskauer: We consented, your Honor, just to relieve this Court of the burden of deciding it.

Judge Hand: I suppose so. That is your only object in life always.

Mr. Marcus: Outside of the provisions I have mentioned

there is nothing new with respect to divestiture as contrasted with what has been provided in the Paramount judgment. There is a provision permitting Warner to [fol. 208-8] retain certain theatres in certain towns, and that is in Section 8 on Page 26. There again we looked into the competitive picture and felt that it would not unreasonably restrain competition if Warner were allowed to do so.

Your Honor, my colleague Mr. Silverman is going to discuss the divorcement provisions of this decree, but before he does so I would like to raise something for your Honors' consideration.

At various times when we have appeared before this Court your Honor has indicated that it has thought that it has been a considerable burden upon this Court for the parties to keep bringing up matters arising from the enforcement of these judgment before this Court. We have discussed this matter with Warner and the judgment contains a provision similar to that in the Paramount decree, to the effect that the parties waive the necessity of convening a court of three judges and agree that any application may be determined by any judge sitting in the United States District Court for the Southern District of New York.

I would like to go a little further and suggest for your Honors' consideration the possibility of your Honors discussing with Judge Knox the possibility of having a judge, one judge, assigned to take care of matters which might arise in connection with the enforcement of this judgment. [fol. 208-9] In that wise your Honors would be relieved of the burden and at the same time the parties would have some assu nce that there would be one particular Judge familiar with this rather complex case.

Now, one other matter, Your Honor, I underst d there is——

Judge Hand: What clause is in here about this?

Mr. Marcus: There is a clause providing that the parties waive the necessity of convening this Court and may present their problems before any Judge in the Southern District. But the further point I am making is that we and Warner feel that it would be more conducive to a determination of the problems which may arise in connection with

this judgment if one particular Judge was assigned to take care of any problems that might arise.

Judge Hand: What they will try to do if you do not do that will be to land this on Judge Goddard in some way, and I know perfectly well he does not want to stay with this.

Mr. Proskauer: I was going to nominate him, your Honor.

Judge Hand: What is that?

Mr. Proskauer: I was going to nominate him for the accolade. He knows more about it.

Judge Hand: I expect you would. I would too, if I were in your place.

[fol. 208-10] Mr. Marcus: Well, that is a matter of course for your Honors' determination. We are just making that suggestion because we realize that there will be problems arising.

Judge Coxe: I am not at all sure that the alternative suggestion is a practical one. Theoretically I do not think that the Chief Judge has any authority to designate one particular Judge to one particular proceeding or case at all times. That has not been the understanding throughout the time that I have been on the District Court.

The statute, as I recall it, merely says that the Judges shall divide up the business and time among themselves; and usually at the beginning of each year we have done that: each member of the Court goes in for one month into a particular part. And here recently there has been some controversy as to assignment of Judges.

So I am wondering whether it would be possible to take one particular Judge and then have him designated or assigned, as you say, for all time by the Chief Judge.

Mr. Marcus: Well, that, of course, your Honor, I certainly don't know, but I do know that the by-laws provide or involve any judgments.

Judge Hand: I am inclined to agree with you on that.

Judge Coxe: By custom I think it should be done.

[fol. 208-11] But the other alternative, of course, seems to be that if there is to be an order or a motion submitted, that the person who is making the application would want to pick out particular Judges that he wanted to have hear it. That is as it stands now from what you say is in the proposed decree.

Mr. Marcus: That is right, or if the time were such——

Judge Coxe: It would be, of course, better to have any such motion or application made before the Motion Judge, just as we did I remember at one time about twenty years ago with respect to reorganization proceedings, but it did not get by the Supreme Court of the United States as you may recall.

Mr. Marcus: Your Honor, I understand that there is a motion for intervention in this case.

Now, the Government and Warners both oppose this motion and after your Honors have heard the attorney for the would-be intervener I would like to be heard with respect to that motion.

Judge Hand: All right.

Mr. Silverman: If your Honors please, as Mr. Marcus stated, I am going to confine myself to the provisions of the judgment dealing with the divorcement.

The judgment provides that within ninety days Warner [fol. 208-12] Brothers Pictures, Inc. is to present a plan of reorganization to its stockholders which is to provide for the transfer of its exhibition assets to a new theatre company; for the transfer of its production and distribution assets to a new picture company, and for the dissolution of Warner Brothers Pictures.

The stock of the two new companies is to be distributed pro rata among the present stockholders of Warner Brothers Pictures. This is to be done within a period of twenty-seven months, after which reorganization the two new companies are to be operated wholly independently of each other. They are to have no common officers, directors, agents or employees, and each is enjoined from attempting to influence the business or operating policies of the other in any way.

Judge Hand: Well, this is practically the same as in the Paramount and RKO cases, isn't it?

Mr. Silverman: And RKO.

Judge Hand: And the Pullman Company formula, isn't it?

Mr. Silverman: Well, with respect to the formation of the two new companies it is what was done in the Paramount and RKO.

Judge Hand: Yes.

Mr. Silverman: Now, with respect to the way we assure [fol. 208-13] that there will not be common control, I think what is being done is similar to what was done in RKO rather than what was done in Paramount.

Control over Warner Brothers Pictures is held by the three Warner brothers by virtue of their ownership and ownership by certain members of their families of approximately 24 per cent of the outstanding common stock of Warner Brothers Pictures which excludes treasury stock.

The Warners are required by the judgment to use their best efforts to dispose of the stock received by them and their families in one or the other of these two new companies within 27 months, and the disposition is to be made to a purchaser who is not a stockholder in the other company who is not a defendant in this case, or who is not a defendant in any antitrust case brought by the Government relating to the production, distribution or exhibition of motion pictures against whom a judgment has been entered, and which is not owned or controlled or affiliated with any such defendants, or with the company resulting from divorcement provided for in the judgments entered in this case.

Now, if the best efforts of Warner Brothers to sell their stock does not result in a sale within 27 months, the stock is to be deposited with a trustee designated by the Court until the stock of the three Warner Brothers and their [fol. 208-14] families is disposed of. The trustee will——

Judge Hand: You mean all of the stock of the Warner Brothers is to be so deposited?

Mr. Silverman: Is to be deposited; that is, the stock in the company in which they elect to remain is to be deposited with the trustee.

Judge Hand: Yes.

Mr. Silverman: And the trustee will exercise voting powers with respect to that stock. However, the obligation of Warner Brothers——

Judge Hand: That is just about as I member it like RKO, isn't it?

Mr. Silverman: Like RKO, that is correct, your Honor. The obligations of the Warner Brothers to use their best efforts to dispose of the stock does continue, however, after the stock has been trusteed. The other terms and conditions of the trust are to be prescribed by the Court.

The three Warner brothers must elect in which company they will retain their interest as a family entity. This means that one of the Warner brothers could not elect to retain his interest in one of the new companies while the other two brothers elected to retain their interest in the other two new companies. They all have to remain in the same company.

[fol. 208-15] The judgment provides that the new picture company cannot engage in the exhibition business and that the new theatre company cannot engage in the distribution business except with Court approval after a showing that any such engagement will not unreasonably restrain competition in the distribution or exhibition of motion pictures.

Now that provision was contained in the judgment of this Court which was entered last February.

There are also provisions in the judgment which are designed to prevent the new theatre company from being controlled by any other theatre circuit, and to prevent the new picture company from being controlled by any other distribution company.

Thus the by-laws of the new theatre company are to provide that a person affiliated with any other motion picture theatre circuit cannot be elected an officer or director until he has been approved by the Attorney General and by the Court.

And it is further provided that in no event can an officer or director of the new theatre company be affiliated with a theatre circuit which has been a defendant in any antitrust case brought by the Government relating to the production, distribution or exhibition of motion pictures.

The by-laws of the new picture company are to provide that a person who is an officer, director, agent, employee [fol. 208-16] or substantial stockholder in any other motion picture distribution company cannot be elected an officer or director.

I think this provision is a new one which is not contained in the Paramount or RKO judgment.

Judge Hand: Yes.

Mr. Silverman: Those I believe are the principal provisions dealing with the divorcement of the Warner Brothers exhibition business from its production and distribution business.

Judge Hand: Now, this raises a question in my mind. Assume that the Warners went into production and not exhibition, just for the purposes of argument, then what would be the limits of their power? They could not affiliate with any circuit?

Mr. Silverman: The exhibition company?

Judge Hand: Yes, I am assuming that the Warners went into a production company.

Mr. Silverman: Well, of course, the safeguards—the purchaser to which the Warner Brothers could sell their stock is limited, and they could not sell their stock to any other circuit which was a defendant in an antitrust case relating to the production and distribution of motion pictures, and they could not sell their stock to another defendant in this case. They could not sell it to a stockholder [fol. 208-17] in the other companies, so that the affiliation which we are trying to break up could not be reformed, and they could not affiliate with another theatre circuit formed as a result of the divorcement provided for in judgments entered in this Court, so that an affiliation between this new theatre company and a united Paramount Theatres, for instance, could not take place with United, as it would be an inelegible purchaser.

Judge Hand: The people they can't deal with are former defendants and that is about all, isn't it?

Mr. Silverman: Well, former defendants in addition to any defendant in an antitrust suit brought by the Government relating to the production, distribution, or exhibition of motion pictures and against whom a judgment has been entered.

Judge Hand: Yes.

Mr. Silverman: So that with respect to any other theatre circuit against whom there has been a judgment entered, they would not be an eligible purchaser.

And then there is this provision that I referred to on page 28, Section 7(b), which provides that the by-laws of the new theatre company shall provide that a person affiliated with any other motion picture theatre circuit cannot be an officer or director of the new theatre company unless he is approved by the Attorney General and the Court.

[fol. 208-18] And it further provides that in no event can an officer or director of this new theatre company be

affiliated with a circuit which has been a defendant in an antitrust suit brought by the Government relating to the production, distribution, or exhibition of motion pictures.

Those are safeguards against the common control of the new theatre company with certain other theatre circuits.

Judge Hand: Well, I don't know how much that limits them. I suppose they know about it and you know.

Mr. Silverman: Well, we would hope that there would not be any integration with another substantial theatre circuit, and many theatre circuits are ineligible purchasers that control that stock.

Judge Hand: How are they going to do it? Have the purchaser some kind of——

Mr. Proskauer: I can't quite hear your Honor.

Judge Hand: How are they going to accomplish it? Have the purchaser some outfit that they organized with a view to this thing, and that has been free from these former commitments?

Mr. Silverman: Well, who the purchaser will be I don't know, of course, your Honor.

Judge Hand: Of course you don't know who the pur- [fol. 208-19] chaser would be, but we are thinking about what kind of purchaser they could get.

Mr. Silverman: Well, of course, the purchaser would have to be someone who is eligible under the judgment, and the judgment does limit the eligible purchasers, but, of course, that is necessary.

Mr. Marcus: I would like to make one further comment with respect to your Honor's question, and that is that there is a prohibition which is contained in this judgment of divestiture provisions, and I believe perhaps in the Paramount judgment there is also a provision which prohibits the theatre circuit from acquiring any other theatre without permission of this Court, and that, of course, would apply in the event that they wanted to affiliate with a circuit theatre, so that they would have to come to this Court.

Judge Hand: Do you want to say anything, Judge Proskauer?

Mr. Proskauer: Why, your Honor, we have signed the consent to this decree which is described as a lineal des-

cendent of your Honors' judgment, so we don't raise the question of legitimacy.

Judge Hand: All right. Now, what about this motion or this order to show cause?

Mr. Shipman: If I may hand up an original and three [fol. 208-20] copies (handing to Clerk).

I think perhaps it is unnecessary to say, your Honors, that I am not here by invitation. I have already had evidence of a little cold shoulder, but we find ourselves in a situation which I feel in the interest of my client it was necessary to bring to the attention of the Court.

My client, Sutphen Estates, Inc., is the owner of the very valuable real estate property on which the Trans Theatre is located at 47th Street and Broadway. That theatre property is under a lease to a subsidiary of Stanley Theatre Company, which in turn is a subsidiary 99 per cent of Warner Brothers Pictures, Inc., the top company in this Warner organization.

Under the decree which is proposed to be entered the properties of the Warners organization are to be transferred to theatre properties, to one actually created corporation, and all other assets to another of those corporations in exchange for all of the shares of capital stock of the two new companies, those shares in turn to be distributed by the top company to its sales of top company by the decree.

[fol. 208-21] The lease, which is a 98-year lease, entered into in 1928, is guaranteed by the top company, Warner Bros. Pictures, Inc., which is to be dissolved as a result, therefore, of this decree.

Judge Hand: That is your lease?

Mr. Shipman: That is our lease, guaranteed by the company which you are decreeing shall be dissolved. Our guarantee, therefore, is destroyed.

Now, we think the rule is quite clear that if this transfer was a voluntary transfer to a corporation in exchange for its stock and all of that stock was then distributed to stockholders, that transferee corporation would, by operation of law, be personally obligated for all of the liabilities of the transferor corporation.

That analogy, I think, passes right through this whole plan.

We think also the law is that in a situation of this kind

the Court, when it decrees the destruction of our guarantee, has a responsibility to us to provide that we shall have a judically ascertained equivalent therefor. We think the judicially ascertained equivalent therefore should be the guaranteed obligations of a transferee corporation.

Now that, in very short, is our position. We do not think it is necessary, and I want to say at the outset that we do not think it is necessary to disturb this decree which [fol. 208-22] you are about to enter. It may be that we are here prematurely, but it seemed to us important to bring to the attention of the Court at our earliest opportunity the situation that we are confronted with.

Now I would like to make a request and then I would like to make a practical suggestion.

In my motion papers I would like to make a slight amendment in order to raise a constitutional question under the Fifth Amendment. Second, I would like to suggest this: This is an extremely important matter for my client, requires a fuller presentation than I can make at this time. We have been invited by Mr. Perkins, of Warner Bros., to confer with them. I have talked with Mr. Timbourg of the Antitrust Division, and my suggestion, if it is acceptable, is that this motion be adjourned for three or four weeks to see if we can work out a satisfactory solution.

Now, what is going to happen from hereon, I assume, is that the Warner people are going to be preparing a proxy statement. That proxy statement will have to set forth in considerable detail what they propose to do with the assets, how they propose to take care of the liabilities of these companies. They will be confronted with this problem, will have to meet it and will have to solve it. [fol. 208-23] We may be of assistance in solving it.

So that my practical suggestion is that this matter be deferred for three or four weeks, adjourned to see if we can arrive at a solution.

The amendment that I am proposing is the addition to paragraph 12 of the following additional language: "and intervenor will be deprived of his property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States."

I have a page which can be substituted if that informality can be accepted, without necessity of a formal application.

Judge Hand: Now we will hear Mr. Marcus.

Mr. Marcus: May it please the Court, for the very reason that Warners are preparing a proxy statement to be submitted to their stockholders and I believe that the stockholders' meeting has been set for February, I do not believe that action on this motion should be relegated to the future. The would-be intervenor in this case is apparently attempting to convert this from a public antitrust case to a private antitrust case. This is a converse of what occurred at the time the Paramount judgment was [fol. 208-24] entered. At that time Mr. Russell Hardy, on behalf of a lessee of some theatre in California, a lessee from Paramount—Paramount was the lessor—attempted to intervene, and your Honors denied that intervention. Here we have a lessor attempting to intervene.

Actually what the intervenor is attempting to do is to supersede both the State laws and the Federal laws, as we understand them, with respect to the power to dissolve a corporation. The position the landlord is taking apparently is that dissolution cannot be decreed unless there is a condition providing for his special circumstance. I suppose he would maintain that position whether or not conditions were met for dissolution under the State law, and certainly he has maintained that position, although conditions have been met under the Federal law for dissolution, and I refer to the Sherman Act.

He has referred to an amendment to his petition whereby he raises the Fifth Amendment to the Constitution. Now, I do not have the cases at hand that have dealt with this problem, but there have been cases, Supreme Court cases, which have dealt with this problem and have flatly denied that there is a constitutional question, and have held that the Court has the power, in order to bring about competition, to dissolve corporations and to affect the underlying [fol. 208-25] interests. And this is apparently what is happening here.

Furthermore, as I understand it, there is not even equity in this situation. There are apparently three corporations involved, aside from the intervenor; the immediate lessee is one corporation, and then we have the Stanley corporation, which is a Warner corporation, and then we have the Warner Pictures Corporation guarantee-

ing the obligation of the lessee. As I understand it, what is contemplated by Warner is that there will be a third corporation created, a new theatre corporation, and its obligation as guarantor will be substituted for the present picture company which will be dissolved. So you will again have three corporations apparently on this lease. The intervenor would have the fourth corporation, the picture company.

Now we are unalterably opposed to that because the very purpose of this judgment is to effect a complete separation of the picture company from the exhibition interests and the exhibition company from the distribution and production interests. To put the picture company in the position of a guarantor of a theatre is to give it an interest in the success of that theatre and to give it an interest in the exhibition business. Furthermore, I believe, and of this I am not quite certain, that Warners has other situations similar to this one, and this would merely be an [fol. 208-26] invitation for other persons to come in.

Judge Hand: There must have been a great many situations like this in this case.

Mr. Proskauer: Why, of course.

Mr. Marcus: I assume there are.

Judge Hand: And I told the applicant that I had no idea we would grant any intervention. We never have. But what have you got to say?

Mr. Proskauer: I have just this to say. This idea of a practical solution by adjournment is quite out of the question. Our annual meeting is coming in February and we have to go ahead with this thing.

Mr. Shipman stated the answer to his own client when he said he was premature. What you are doing is to order the separation of these companies and a dissolution. We have to dissolve under the provisions of the State statute. And every State in its provisions about dissolution has provisions for taking care of such contingent obligations. In most States the provision is that reasonable provision has to be made, and if that is made the guarantee is taken care of. Here there would not be any question; the assets of this theatre company are enormously more than enough to give Mr. Shipman's client every assurance.

[fol. 208-27] But the point I am making is that if this

Court is going to allow everybody to intervene that has a claim like that and try to settle everyone of those claims which properly can be asserted, even if no good can come of it, in a State dissolution proceeding, why, this Court is hamstrung and we can't ever get ahead.

So my final answer to Mr. Shipman is that he is right when he said he is premature. He is crying before he is hurt. And when we begin our dissolution proceedings under the State statute he has every opportunity to be properly taken care of.

Mr. Shipman: May I say just one word more? While I appreciate that this client takes the familiar form of plans that have already been approved, I think there was no comparable situation to this in either the Paramount case or the RKO case.

Judge Hand: We shall have to deny this application.

Mr. Shipman: May I ask that it be denied without prejudice to another application, if you find we are hurt?

Judge Hand: No, you have got your proper remedies in these dissolution proceedings at other times.

Judge Goddard: Doesn't the State law provide that?

Mr. Shipman: The Supreme Court of the United States [fol. 208-28] has indicated in a case quite similar to this with a mortgage obligation in an antitrust case to recover property of two companies which had to be separated, that the Court was bound to judicially ascertain an equivalent substitute, and did so in an opinion by Chief Justice Taft in 259 U.S.

Judge Goddard: How do you know that you won't receive complete protection?

Mr. Shipman: I don't know what complete protection is. We now have a guarantee of a company with all of the assets of the Warner organizat' n behind it. The proposal now is that we take a guarantee of the new theatre company which is to have the theatre assets only, after many of the theatres have been divested. Presumably there will be a quid pro quo for them, but I do not have the equivalent of the guarantee we now have, when we are asked to take the guarantee of the theatre company only.

Judge Hand: I don't know whether you will or not.

Judge Coxe: With an employee of the Warner Company who had a contract for five years, wouldn't the same problem arise?

Mr. Shipman: I think it is very simple, in a situation of that kind, to find that the employee ordinarily, the employee who has to be dealt with, is an employee of the subsidiary company, and in that situation is very easy [fol. 208-29] to deal with, as are contracts of talent and so forth. Those are usually a short term. Here is a contract which still has 76 years to run, with an aggregate obligation in cash, rent and security of twenty-three million and a half thousand dollars.

Judge Hand: But you could have questions of leases, you could have all kinds of things. There are innumerable things that are affected by this order.

Mr. Shipman: It would seem to us that the time to apply for this relief was at the time when our guarantee is destroyed by the Court, not at a subsequent time when we may be charged with not having raised the point when we should have.

Judge Hand: Now do I understand that this——

Mr. Shipman: And in answer to the Government——

Judge Hand: ——consent judgment as to the Warner defendants now lets out this Court as a three-judge court? Is that right?

Mr. Marcus: It does, your Honor. It gives the parties the right to make their application to one judge of this court.

Mr. Shipman: May I say just one more word? The Government is wrong in thinking that we are opposing dissolution. I don't think we would be in a position to oppose dissolution on the signing of this decree. That [fol. 208-30] is not our position.

Judge Hand: I don't think it is. I think your position is a careful position, made in the best of good faith, but I just don't think you can protect yourself in this way.

Mr. Shipman: I think it comes squarely within Rule 24. The Court is distributing property within its control, and we are adversely affected.

Judge Goddard: Three of these are to be signed, is that right?

Mr. Marcus: Not all three have to be signed, your Honor. I suppose just the one that has been entered. We thought that we would submit three signed copies to the Court.

Judge Hand: I feel we can say on behalf of Judge Bright, who used to be in our Court and who died two

years ago, unfortunately, that we have had splendid cooperation in this thing from the lawyers from the Government and from the lawyers for the defendants. We have been very fortunate to have such an extremely complicated mess of a case in the hands of people who knew their business.

The Clerk: This Court now stands adjourned.

[fol. 209] UNITED STATES DISTRICT COURT

Equity No. 87-273

ORDER

[TITLE OMITTED]

This Court having on January 4, 1951 directed the entry of a Consent Judgment as to the defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation and it having been provided in Section 1 of said Consent Judgment: "This judgment shall be of no further force and effect and this cause shall be restored to the docket without prejudice to either party if the proposed reorganization of the Warner defendants shall not have been approved by the stockholders of Warner Bros. Pictures, Inc. within ninety (90) days from the entry of this judgment. Upon said approval by the stockholders this cause shall be severed and terminated against the Warner defendants as of the date of this judgment," and it having been provided in Section VI of said Consent Judgment that: "The defendant, Warner Bros. Pictures, Inc., shall present to its stockholders not later than ninety (90) days after the entry of this judgment, a plan of [fol. 210] reorganization to effect the divorcement of its theatre assets located in the United States from its production and distribution assets."

Now, on reading and filing the annexed affidavit of Edward K. Hessberg, sworn to on March 1951, from which it appears that the said proposed reorganization was approved by the stockholders of Warner Bros. Pictures, Inc. prior to April 4, 1951, it is

Ordered, Adjudged and Decreed that the above entitled action be and the same hereby is severed and terminated as against the defendants Warner Bros. Pictures, Inc., Warner Bros. Picture Distributing Corporation and Warner Bros. Circuit Management Corporation as of the 4th day of January, 1951.

Dated, New York, N. Y., March 1, 1951

/S/ Augustus N. Hand, United States Circuit Judge; /S/ Harry W. Goddard, United States District Judge; /S/ Alfred C. Coxe, United States District Judge.

[fol. 211] **Affidavit**

State of New York,
County of New York, ss:

Edward K. Hessberg, being duly sworn, deposes and says:

I am and have been for many years an Assistant Secretary of the defendant Warner Bros. Pictures, Inc. The annual meeting of the stockholders of Warner Bros. Pictures, Inc., was duly called to take place on February 20, 1951. One of the purposes of the meeting was to vote on the proposal to approve a Plan of Reorganization submitted pursuant to the provisions of the Consent Judgment dated January 4, 1951. Due notice of such meeting was given to all stockholders and the meeting was duly held on February 20, 1951.

At that meeting, 5,079,833 shares of the stock of Warner Bros. Pictures, Inc., constituting 75.01% of the outstanding common stock of the Corporation as of the close of business on January 4, 1951 (excluding 523,000 shares held [fol. 212] in the Treasury) were duly voted in favor of approving the Plan of Reorganization. 41,579 shares of such stock, constituting .61% of such outstanding common stock, were voted in opposition to the approval of the Plan of Reorganization.

Therefore, the proposed reorganization of the Warner defendants has been approved by the stockholders of

Warner Bros. Pictures, Inc. prior to April 4, 1951, as required by Sections I and VI of the said Consent Judgment.

Sworn to before me this 1st day of March, 1951.
Edward K. Hessberg.

Anna G. Krasner, Notary Public State of New York, qualified New York County, 31-2194300. Cert. Filed N. Y. County Register. Term expires March 20, 1951.

[fol. 213] Clerk's Certificate to foregoing papers omitted in printing.

[fol. 214-216] SUPREME COURT OF THE UNITED STATES

October Term, 1950

No. 668

DESIGNATION OF POINTS INTENDED TO BE RELIED UPON AND PARTS OF RECORD TO BE PRINTED.—FILED

MAY 19, 1951

Pursuant to Paragraph 9 of Rule 13 of the Rules of the Supreme Court of the United States, Appellant for its definite statement of the points on which it intends to rely incorporates by reference its assignment of errors filed herein dated March 2, 1951 and designates as the parts of the record which it thinks necessary for the consideration thereof those parts of the record enumerated in its praecipe for transcript of record filed herein dated March 7, 1951.

Bertram F. Shipman, 40 Wall Street, New York, N. Y., Counsel for Appellant.

Proof of service omitted.

[fol. 217] SUPREME COURT OF THE UNITED STATES

October Term, 1950

No. 668

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED.—FILED MAY 28, 1951

Pursuant to Paragraph 9 of Rule 13 of the Rules of the Supreme Court of the United States, Appellees designate as the additional parts of the record which they think material those parts of the record enumerated in their designation of additional portions of the record desired to be included filed herein dated April 5, 1951.

Joseph M. Proskauer, R. W. Perkins, 321 West 44th Street, New York 18, N. Y., Counsel for Warner-Appellees.

[fol. 218] SUPREME COURT OF THE UNITED STATES

October Term, 1950

No. 668

ORDER—MAY 14, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court and of the motion to affirm is postponed to the hearing of the case on the merits and the case is transferred to the summary docket.

Mr. Justice Jackson and Mr. Justice Clark took no part in the consideration or decision of this question.

[Endorsed on cover:] File No. 55,174. U. S. D. C., Southern New York Term No. 25. Sutphen Estates, Inc., Appellant, vs. The United States of America, Loew's Incorporated, Warner Bros. Pictures, Inc. Filed April 9, 1951. Term No. 25, O. T. 1951.